

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-06-06 11:55:33

About you

1 What is your name?

Name:

[REDACTED]

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

Enter the name of your organisation:

[REDACTED]. However, I am also someone who will only be able to have children with my spouse if we use (gestational) surrogacy. I am very keen to do this, but I have concerns because of the current legal/practical framework.

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

This is a personal response

If other, please provide details:

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

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

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

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

I would prefer my name not to be associated with comments published publicly, as far as this is reasonable. This is because my answers are based on personal health situation and intentions about parenting, both of which are private.

Chapter 6: The parental order procedure

8 Consultation Question 1:

Not Answered

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

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

Please provide your views below:

11 Consultation Question 4:

Not Answered

Please provide your views below:

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

Not Answered

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

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

14 Consultation Question 7:

Yes

Please provide your views below:

It's surrogacy. It should be entered into only when all parties expect and understand that the baby will go home with the intended parents, rather than the birth mother. If this is understood and expected by all, it should also be the legal situation.

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:

Yes

Please provide your views below:

I agree that the surrogate needs to have the right to register an objection, but I am uncertain as to what this would mean in practice. On what grounds is she able to object? What would that entail? If the case is still that the surrogate is able to automatically gain custody of the baby, the right to object maintains all the problems with the current situation. Perhaps it would be better to decide whether the law sees the baby as belonging to the surrogate, or belonging to the parents, and then make that categorical rather than continuing to try and straddle both? But again, I'm not sure the details of the right to object so uncertain whether these concerns apply.

19 Consultation Question 12:

No

Please provide your views below:

I think this is the problem with surrogacy - it does not provide enough stability for the intended parents, and it is a terrifying prospect that you could conceive a child, have that child borne for 9 months by a surrogate, and then have them snatched away from you with no warning at birth. If there is to be a change in the law, it should be in favour of a clearer legal message - either the baby is rightfully the surrogates, or it is rightfully the intended parents.

Similarly, if the intended parents make an application for a parental order to obtain legal parenthood, and that is likely to go through, this right to object doesn't add anything beneficial - if the child is going to ultimately be the intended parents anyway, adding a time period where neither surrogate nor

intended parent can be sure that that will happen just puts them both through torment for no reason.

20 Consultation Question 13:

No

Please provide your views below:

This feels like far too late to be obtaining consent.

I feel like what is important is that the situation is clear and consistent throughout the whole surrogacy process. There should be adequate consent and capacity assessment prior to conception, as well as a commitment on both parts (i.e. surrogate and intended parents) that everyone is definitely clear that the baby will go home with IP. This should be rechecked and discussed at every antenatal appointment. None of this should still be in question at the point of the birth.

I also think that this approach would be better for surrogate mother - giving up a child that you have carried may be difficult or distressing, but I am not sure that it would be less so if you are in doubt as to whether or not you have the option of raising that child.

Similarly, I think the relationship between surrogate and intended parents would be fraught and difficult if both had the impression that the other was trying to steal their baby..

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:

I understand that the law here is complicated, but I think it depends on the specific surrogacy arrangement. The genetic parents have a claim on parental rights, as does the woman who carries the baby. The spouse of any of these does not have a claim.

So e.g. if a surrogate gives birth to a child conceived with her egg and X's sperm, her and X have a right to parenthood. Neither of their spouses do (unless there has been a pre-agreed surrogacy arrangement etc.) However, if a surrogate gives birth to a child conceived with X's sperm and Y's egg, all three have a claim to parenthood in the absence of an arrangement, but nobody else does.

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:

I would suggest that there be some sort of automatic process here, because this sounds like a horrific piece of bureaucracy to have to deal with when you've just lost your child.

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 the new pathway should contain sufficient explicit discussion and paperwork to ensure that in the event of surrogate death, the intended parents automatically become the legal parents. The approach should be that surrogates only exercise their right to object very rarely and for entirely unforeseen reasons, and that intended parents are rarely expected to go through the process of applying for a parental order. That situation would mean that in the event of surrogate death, a process that would otherwise be straightforward and simple would become fraught with practical and emotional challenges - for no good reason, the surrogate being dead thus means that they are unable to parent the child anyway. What is the purpose of expecting the intended parents to go through an application?

26 Consultation Question 19:

Yes

Please provide your views below:

Yes. It should not be the case that the surrogate is expected to keep and raise the baby.

Please provide your views below:

I don't know - I am unsure of how formalised surrogacy arrangements can be. I am wary of automatically making the surrogate a legal parent, because it undermines the notion that intended parents are really parents and suggests that the surrogate is indeed really the mother. Again, it depends on who the genetic parents are, and how clear all parties are prior to birth/death about the process. Also, whether the surrogate actually wants to raise a baby - it should not be assumed that she will, or that she will feel like a mother to that baby.

27 Consultation Question 20:

Other

Please provide your views below:

Again, this needs to be clearer from earlier on! It should not be left until after birth for it to be clear in paperwork who the intended parents are.

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'm unsure. To me, what keeps jumping out as important is how scary it is as intended parents to feel that your baby might be taken out of your care. Similarly, for the sake of child wellbeing, I think it is important that children born through surrogacy have at least an option of a childhood that is as normal as possible. For the family of intended parents + child, it is important to be able to feel assured that you can just take your baby home and be parents like everyone else. From that perspective, I don't think the surrogate should have parental rights, regardless of the time frame involved or the specific details.

However, this depends on things like specific genetic arrangements - I feel differently if the surrogate has conceived with her own eggs.

Similarly, parental rights are a specific set of privileges. Perhaps a better approach would be to allow surrogates to claim the right to be kept updated as to the child's wellbeing, or even to have some contact? So rather than being a parent who has parental rights, a surrogate can object to having the child removed entirely from her life, and be given the right in law to be provided with (e.g.) annual updates from the parents as to child wellbeing, with the option of visits or contact (perhaps further down the line with child consent?). This would respect both the surrogate mother's unique connection to the child, and the need for the intended parents to experience full, normal 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:

There needs to be the consent of the surrogate mother. This should be obtained before birth, but it does need to be present - otherwise, how can there be certainty that the process was really surrogacy, as opposed to (e.g.) unintended pregnancy as the result of marital affair?

Doctors/midwives could play a role here - pregnant women get antenatal care, it would be reasonably straightforward to include a question about surrogacy in standard 'booking in' maternal visits, and then to document the findings. Doctors already document everything for medicolegal purposes so there is a precedent, and then there would be a document from the beginning of pregnancy confirming everyone's expectations/involvement at the outset.

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:

I think the default should be that the surrogate mother is not a parent (unless it is a baby conceived with her egg), and therefore does not have parental rights.

36 Consultation Question 29:

Please provide your views below:

I think the genetic parents should have parental rights, and that anyone else does not have parental rights by default.

Additionally, I think it would be unwise to put a legal emphasis on who takes the baby home from hospital. If I thought my surrogate might be able to claim parental rights over my baby, and I knew that taking the baby home from hospital gave me more claim to having those rights, I would definitely consider just taking the baby from the hospital at the first opportunity. This puts a horrible burden on the relationship between parents and surrogate - how can you be honest and respectful if you're both terrified that the other is going to lay claim to the baby without your consent?

What is needed is for the legal process and rights to be clear and straightforward, and everyone aware of them, so that the relationship can be transparent and mutually considerate.

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 think that the genetic parents matter - it makes a difference who is related to the child. Traditional surrogacy should still be in the new pathway, but there should be different provisions for those surrogates who are related to the baby.

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:

For gestational surrogacy, the genetic parents should be legal parents, automatically, and the surrogate should have the right to claim contact if she wants. Additionally, there could be a process through which surrogate could go to court for parental orders, but I do not know if this would be helpful for anyone.

For traditional surrogacy, genetic parents should be legal parents, automatically, and then there should be a process of granting a parental order to intended parents, with the full consent (consistently given throughout the pregnancy) of everyone.

Both of these should take place within the context of a well supported professional care pathway, in which discussions are well documented. Indeed, informal surrogacy arrangements should be picked up as a matter of course by the maternity team when booking in a new pregnancy.

40 Consultation Question 33:

Yes

Please provide your views below:

When approaching surrogacy, I have two major concerns.

The first is that I will conceive a baby with my spouse, a surrogacy will carry that baby, and then at the last moment we will be denied the right to parent that child as our own.

The second is that I will not be able to find a surrogate or get started on the whole process. I am concerned that I will be unable to do it at all either because I can't afford it, or because the surrogates available will be looking for an arrangement in which they are a third parent. I do not want a three parent family - I want to raise our children with my spouse like everybody else gets to!

A regulated surrogacy organisation would answer the second concern - I want it to be clear and straightforward how to access surrogates and negotiate the process. A clear legal framework would address the first concern.

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:

As an intended parent, I would be looking for the following:

- An organisation to whom I could apply who would then connect me with a surrogate
- Reassurance/confidence that the organisation has ensured that the surrogate is fully consenting, fully aware of what surrogacy means, and has capacity to do so (i.e. isn't coerced, isn't expecting to have a child, etc..)
- Reassurance that the organisation has ensured everything is legally above board, and all correct paperwork has been managed

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:

The organisation who is matching surrogates and intended parents is responsible for ensuring that the surrogate is mentally well, consenting, has capacity, and fully informed of what she is doing. They are also responsible for this for the intended parents, but its the surrogate for whom this is most sensitive (although the organisation must ensure, for example, that the intended parents know they are having a baby and can't pull out).

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?

Other

Please provide your views below:

I think surrogacy should be available on the NHS, as is IVF, for those who are unable to have children without surrogacy. I would be willing to pay a reasonable fee to have my surrogacy facilitated, but I am concerned that allowing surrogacy only to the wealthy is discrimination - why should the poor be denied the choices to have children that the rich have? This is classic health inequality, and should not be introduced into new legislation.

Additionally, if I was paying for the surrogacy, I would feel that I had more of a right to demand that my rights were protected. If I paid an organisation to arrange me a surrogate, and then that surrogate changed their mind, I would feel that the organisation had not provided the service I had bought, and expect a refund.

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:

I don't think that the advertising is where the concern is. Surrogacy is important, it should be accessible. However, there should be strict and careful regulation of how women can be recruited as surrogates - I would perhaps go as far as suggesting a ban on recruitment, and only allow volunteers to become surrogates? This is the most important aspect of an organisation for me - I do not feel I would be able to accurately assess a surrogate's state of mind myself to ensure she is informed and suitable for surrogacy, especially as I would be so emotionally invested, so I want to feel confident that the organisation and the law are handling that aspect for me. This is where the regulation is needed, not the advertisements.

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?

Yes

Please provide your views below:

Yes, but this has to be carefully worded. In gestational surrogacy, it should be very clear that the parents are the intended parents, but that the baby was carried by the surrogate. It should not suggest that the child is related to the surrogate, or that the surrogate is a third parent. Many people do not understand how genetics/pregnancy work biologically, and I would be very concerned of teenagers accessing this information and then seeking out their 'third parent' only to be confronted with a surrogate who feels no parental feelings towards that child at all.

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:

No

Please provide your views below:

I am uncomfortable with this idea for two reasons. Firstly, this is largely a register of infertile and/or LGBT people, and that feels like a dodgy idea. Secondly, I think it is important to prioritise that families born through surrogacy are still normal families, and the expectation that they have to be on a special register interferes with that. Why is this necessary? This information should be accessible on an individual basis from things like birth certificates, health records, legal documents - there is no need to centralise it.

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:

Huh, there's an idea. I do not know if this matters. I think it is important to know whether your partner is related to you, so it is important to know if you share a genetic parent, but this should be covered by birth certificates or legal parental orders etc.

Allowing this provision for gestational surrogacy implies a biological falsehood - there is no genetic relationship between the foetus and the surrogate, so it doesn't mean anything if you were carried by the same surrogate. Suggesting that it does reinforces the idea that the surrogate is a mother/relative in some way.

But, this is just my opinion, and I understand that other people might feel weird about this.

59 Consultation Question 51:

Not Answered

Please provide your views below:

I am not sure what is meant here? If people are genetically related, they should be able to contact each other, but I am unsure whether this in itself justifies the creation of a register. However, being born to the same surrogate does not entail that you are genetically related, so this should only apply to those who share the same genetic mother, and that shouldn't require a register to facilitate contact?

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:

Other

Please provide your views below:

If the provisions for allowing the intended parents to be granted a parental order are as simple as they are looking after the child with the consent of the surrogate, they should be granted parental rights automatically rather than through a legal process.

The welfare clause opens up a concerning possibility - intended parents could coerce a vulnerable woman into being a surrogate, e.g. through payments, with the intention of obtaining a parental order based on knowledge that the court would not consider the surrogate a fit parent. So for example, someone who has already had children removed into foster care could become pregnant, sign a consent form in exchange for a payment, attempt to obtain parental rights, and then have the parental order given to the intended parents on the basis that she cannot raise the child. There should be protection against this if possible.

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?

Yes

Please provide views below:

The surrogacy should make a similar declaration.

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:

Not Answered

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

I think surrogates should have the right to anonymity if they choose. A gestational surrogate is not a parent - if she wishes to remain anonymous and uncontactable, and the parents accept this, she should not have to be put on a register indefinitely. She may feel that this suggests she is a parent to the child she carried, or that it impacts the relationship she has with her own children that she is raising, or similar. If a surrogate and the intended parents all genuinely want to cut ties and have the surrogacy just be a kind act that is now finished, that option should exist.

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

No. There should be welfare provisions in who can have custody of a child, but these have to be based on capacity to care for a child, which may be related to age but is not defined by age. Thus restricting by age is discrimination.

Yes

Please provide your views below:

73 Consultation Question 65:

No

Please provide your views below:

I feel that surrogates should be much older than 18, preferably having had their own children already (if only because they then know how they find pregnancy). All the legislation and regulation should promote surrogates who are stable adults with experience who are fully aware of what they are doing.

However, in the event that a teenager does find themselves in a surrogacy arrangement, denying the option of a parental order does not feel helpful.

Yes

Please provide your views below:

Possibly older, or with other requirements.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Only when this is medically relevant to the outcomes of surrogacy. This should not be used as an excuse to discriminate. For example, obesity is bad for the baby during pregnancy, but I am unsure whether evidence exists that it is bad for those donating gametes.

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?

Not Answered

Please provide your views below:

This may prove financially impractical. Efforts should be made to minimise the extent to which wealth influences the availability of surrogacy arrangements.

77 Consultation Question 69:

Not Answered

Please provide your views below:

I am unsure. Criminals can become parents, so why should they be prevented from becoming parents through surrogacy? I think a criminal record should only prevent you embarking upon surrogacy if it would entail that the child would be removed from your care anyway. Otherwise, it is irrelevant.

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:

On balance, I think this is probably a good idea and a reasonable requirement. However, there may need to be exceptions. For example, someone may want to be a surrogate for a close relative or friend, despite having never given birth?

In general though, yes I think it is reasonable, and a good way of ensuring that surrogate parents are fully aware of what they are committing to.

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:

This is a good opportunity to formalise the relationship somewhat, and to avoid the risk of tensions arising.

81 Consultation Question 73:

Please provide your views below:

The surrogate should not be out of pocket. Thus their essential payments depend on factors such as whether they are working prior to pregnancy, entitled to maternity pay from their employer, supported by a spouse whose income does not change during pregnancy, etc. I would consider loss of income to be essential, as well as travel to healthcare appointments.

However, this also depends heavily on the financial situation of the intended parents. My spouse and I have a decent income - I would be happy to cover things like maternity clothing, comfort aids, etc.. However, if I was on a lower income, these costs may prove impossible to cover.

Perhaps the matching organisation should cover this - there could be a set fee which is set by that organisation and provided by parents to surrogate to cover 'extras' like clothing, comfort aids, etc..

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

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

Please provide your views below:

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

I do not believe that the surrogate should profit from the surrogacy. I am not against commercial surrogacy from the point of view of the surrogate, but I think it introduces inequality into the provision of surrogacy - surrogacy should be equally available to everyone who needs it to have a family.

Compensation is a means of profiting. It is difficult to define and it may result in a situation where wealthier parents can offer financial incentive to access surrogates, while poorer families cannot.

Please provide your views below:

If the surrogate is financially impacted, she should be compensated. This should not arise because of the NHS, but say if the surrogate needs to get a taxi to hospital, or similar.

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:

Again, this places a barrier between people who are not rich and surrogacy. There should not be a cost on the intended parents for these tragic consequences.

89 Consultation Question 81:

Please provide your views below:

I think gifts should be fine so long as they are spontaneous rather than expected, and thus cannot be used as a means of bribing people to become surrogate. So for example, buying a thank you gift after birth would be fine, but including the offer of a new car on your appeal for surrogates is not. Modest/reasonable provision might be adequate here.

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:

Healthcare in the UK ought to be available to everyone regardless of income. Commercial surrogacy makes sense in contexts like the US where it is expected that you pay for healthcare; in the UK, it serves to move surrogacy out of the remit of infertility and healthcare, and into the remit of employment. In the UK, we generally don't pay for things like this - we also can't legally buy kidneys or liver, and we don't expect to pay for blood transfusions. IVF is more complex, but in theory it is accepted that everyone has the right to a limited number of IVF attempts on the NHS without cost. The same provision needs to apply to surrogacy - it should be something that infertile people have access to, and something that surrogates do because they freely choose to, rather than because it's a plausible means of making money. Similarly, I am concerned that introducing a payment alters the nature of the relationship between surrogate and parents - the parents ought to see the surrogate as an equal partner in the arrangement, rather than someone that they are employing and thus have rights over.

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:

No. If payment is accepted, it needs to be clear. Any money given at the beginning of pregnancy is a payment for embarking upon pregnancy. No refunds should be entertained. However, there may be scope for a further payment at the end of the whole process, which will be given only if the process runs to completion.

Not Answered

Please provide your views below:

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

Yes

Please provide your views below:

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

Please provide your views below:

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

Please provide your views below:

There should be funding available from the NHS for this. While things like income costs may have to be worked out case by case, this should be done by an independent organisation (rather than surrogate/parents), and there should thus be a flat fee available close to the beginning of pregnancy (or before pregnancy) which is just paid, and then that's the financial element over (unless further costs emerge, which should be provided for in initial agreement documentation).

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:

The surrogate should not be out of pocket, regardless of what ends up happening in the pregnancy (including her choices).

However, I think this is only really feasible in the context of there not being a payment/compensation arrangement. In commercial surrogacy, it might be reasonable to expect the surrogate (as an employee) to uphold her contract, e.g. by not smoking or getting an abortion, if she expects to continue being paid. This dynamic is a major reason that I feel there should not be commercial surrogacy in the UK.

Chapter 16: International Surrogacy Arrangements

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

Please provide your views below:

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

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

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

Not Answered

Please provide your views below:

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

Please provide your views below:

102 Consultation Question 94:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

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

Not Answered

Please provide your views below:

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

Please provide your views below:

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

Not Answered

Please provide your views below:

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

Not Answered

Please provide your views below:

107 Consultation Question 99:

Not Answered

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

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

Please provide your views below:

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

No

Please provide your views below:

Intended parents should have equivalent parental leave to birth parents.

111 Consultation Question 103:

Please provide your views below:

Yes, there should be provision equivalent to the non-pregnant parent of a pregnant person.

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

Please provide your views below:

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

Please provide your views below:

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

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

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

Please provide your views below:

These laws should be LGBT friendly. This includes provision for transgender individuals to access surrogacy on the same basis as infertile or gay couples. For example, a transgender man who has access to pre-transition frozen gametes should be able to use those with donated or spouse's sperm and access surrogacy on the same terms as an infertile woman.

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:

Currently, it is very difficult to access surrogacy. There is a charity that facilitates matching, but requires a longstanding commitment to a relationship (friendship) with the surrogate. My spouse and I would like to have a child, and we would need to use surrogacy to do so, but we are not interested in introducing a third person into our lives. We would like to be full and proper parents to our child as a married couple, without the requirement of introducing an additional parenting element. The cost of surrogacy overseas that allows this arrangement runs into the hundreds of thousands, making it impossible for us (and I think most people!)

What we are looking for from reform is to have accessible, financially affordable, and reliable surrogacy, in which it is highly unlikely or impossible that we will not end up as the full parents of our child. Many of these reforms will support that end: I think a professional and official organisation that can connect us with a surrogate would be invaluable, and that they would need to handle the surrogate side of things (e.g. ensuring she is fully consenting and has capacity, etc.). I would also appreciate that organisation being a mediator in terms of finances, so that that isn't left to us to negotiate with the surrogate. I think all our rights should be clear and set out in law, and there should be a process through which we can ensure everything is open and

transparent well before the birth of the child.

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:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



From: [REDACTED]

Sent: 20 June 2019 13:34

To: [REDACTED]

Subject: Re: Surrogacy consultation

Dear [REDACTED]

There is a huge amount of information to read to understand the proposed changes but as far as i can tell on a quick glance seem to be a very good thing

i've had two situations that have caused me serious concern - both involving gestational surrogate twins and wonder how the new law might alter the interactions in these cases. Apologies for not taking the time to read it fully enough to discover whether my cases would be dealt with differently under the proposed legislation

In one case, one baby had significant abnormalities and there were discussions about whether to perform amniocentesis which of course had a small chance of causing the loss of both babies. its difficult to imagine a situation where invasive tests could not be anything other than the choice of the host, but it was difficult for the intended parents as they had no say in the decision whether to have it performed. More importantly was the issue of what to do if a serious but non lethal anomaly were identified. We faced the potential situation of one twin surviving with abnormality that the intended parents might have wished to terminate but the host might not or vice versa. Alternatively the intended parents could, in theory have chosen to only adopt the normal baby. As it happened nature took its course and the baby (that turned out did have down's syndrome as well as physical problems) died in utero with the survivor healthy and adopted as planned.

the second case also involved twins where one baby died in utero and the other was born prematurely. the relationship between host and intended parents broke down and although the surviving twin was adopted as planned, the host declined to let the intended parents see the post mortem result of the baby that died even though there may have been implications for the surviving baby. In addition the funeral of the stillborn baby was organised by the host as the IP's had no legal rights to become involved. The final difficulty for the IP's was even after the premature baby was well enough to move to another unit closer to their home near London (they were spending a fortune travelling up and down for many weeks), there was difficulty in deciding who should pay for the long ambulance transfer

finally at the end of the second case, my sympathies were very much with the IP's but do know the host went on to be a surrogate for more couples. I thought there ought to be some way of any new potential IP's being made aware of any previous pregnancy difficulties.

In addition to the difficulties involving hard choices, is communication. Will the new legislation allow the IP's to be kept informed of all pregnancy complications that might affect their unborn baby?

all the best

[REDACTED]

[REDACTED]

Consultant Obstetrician

NHS [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

From: [REDACTED]
Sent: 19 June 2019 11:45
Subject: Surrogacy consultation

Dear All

See below relating to Scottish Government consultancy on surrogacy. If you have any comments/responses can you please send to me and we will send a combined response on behalf of SC RCOG.

Thanks

[REDACTED]
.....

From: [REDACTED]
Sent: Thursday, June 6, 2019 13:08
To: [REDACTED]
Subject: Surrogacy consultation

JOINT CONSULTATION PAPER ON BUILDING FAMILIES THROUGH SURROGACY: A NEW LAW

The Scottish Law Commission and the Law Commission of England and Wales have today published a joint Consultation Paper on Building families through surrogacy: a new law. The paper, and a Summary, can be accessed at <https://www.scotlawcom.gov.uk/law-reform/consultations/>

Surrogacy has become a significant issue in today's society. Change is needed however to ensure that the interests of all the parties involved are properly regulated and protected. To reflect the wishes of surrogates and intended parents, the Law Commissions propose to allow intended parents to become legal parents when the child is born, subject to the surrogate retaining a right to object for a short period after the birth. This would replace the current system where the intended parents must make an application to the court after the child has been born, and do not become the parents of the child until a parental order has been granted.

This proposal for the creation of a new surrogacy process is one of several that the Law Commissions are now consulting on which aim to bring greater certainty, put the child at the centre of the process, and provide comfort and confidence to both the surrogate and the intended parents.

The consultation period will run until 27 September 2019. We would be most grateful to receive your responses to any or all of the questions and proposals. An online form, and letter explaining the consultation process, can be accessed through the link above.

[REDACTED]
[REDACTED]
Scottish Law Commission
140 Causewayside
Edinburgh
EH9 1PR
e: [REDACTED]
t: [REDACTED]

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Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-06-06 17:18:01

About you

1 What is your name?

Name:

[REDACTED]

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

Enter the name of your organisation:

-

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

This is a personal response

If other, please provide details:

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

Legal practitioner

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

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

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

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

There are major policy concerns and sensitivities, therefore it is important these issues are handled appropriately.

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

Continue to be 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?

No

Please provide your views below:

These issues are too important to be covered by default rules.

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:

A child is not a chattel or commodity which can be transferred by a contract.

15 Consultation Question 8:

Other

Please provide your views below:

Such information should be recorded in a central register in the same way as birth certificate details.

Another period

Please provide your views below:

The record should be permanent, in the same way as birth certificate details.

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

Yes

Please provide your views below:

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

Please provide your views below:

18 Consultation Question 11:

Other

Please provide your views below:

The period for objection should be longer, given the possibility of the surrogate suffering from stress and ill-health after the birth.

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:

Welfare assessment of the child after birth is essential.

22 Consultation Question 15:

No

Please provide your views below:

Surrogate's spouse or civil partner should be regarded as the legal parent of the child unless it objects (to provide otherwise is disruptive of the relationship between surrogate and spouse/civil partner).

Yes

Please share your views below:

See above.

23 Consultation Question 16:

No

Please provide your views below:

In such a situation the surrogate should not be subjected to the additional stress of exercising a right to object.

No

Please provide your views below:

In such a situation the surrogate should not be subjected to the additional stress of giving such consent.

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:

This imposes unnecessary stress on all involved.

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:

In such a case the intended parents should be required to make an application for a parental order.

26 Consultation Question 19:

No

Please provide your views below:

This is unnecessary and will only impose additional strain on the surrogate.

Please provide your views below:

Option (2) is best since this reflects reality.

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 is unnecessary, unrealistic and would cause significant legal and social problems.

29 Consultation Question 22:

Please provide your views below:

Additional judicial oversight is advisable to ensure that processes are appropriately followed and given due weight.

30 Consultation Question 23:

Please provide your views below:

The ability of the relevant person to fund care of the child.

31 Consultation Question 24:

Please provide your views below:

The ability of the relevant person to fund care of the child.

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

Please provide your views below:

No. Intended parents are not, and should not be regarded as, in the same category as persons currently entitled to apply for a section 8 order without leave.

33 Consultation Question 26:

No

Please provide your views below:

This approach would effectively remove any rights of the surrogate, therefore is not appropriate.

34 Consultation Question 27:

No

Please provide your views below:

This approach would effectively remove any rights of the surrogate, therefore is not appropriate.

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

No

Please provide your views below:

The surrogate should retain parental responsibility until parental responsibility has been formally granted to someone else.

36 Consultation Question 29:

Please provide your views below:

Parental responsibility should not be shared between surrogate and intended parents.

Chapter 9: The Regulation of Surrogacy Arrangements

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

Yes

Please provide your views below:

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

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Yes.

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

No

Please provide your views below:

If organisations of this type are to be regulated, part of the regulation should prescribe the form.

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;; 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:

This is essential from a social and legal perspective, these organisations must not profit from the birth of children.

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:

Yes

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

Please provide your views below:

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?

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:

Any agreement to transfer a child must, on public policy grounds, not be enforceable.

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

No

Please provide your views below:

To permit charging for such activities would enable profit-making by the back door.

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:

It is not appropriate for this type of service to be advertised.

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:

For public policy reasons and to avoid exploitation the surrogate should not be making a profit from these arrangements.

81 Consultation Question 73:

Please provide your views below:

Essential costs should consist of health care and similar costs directly arising from the pregnancy.

82 Consultation Question 74:

Please provide your views below:

No.

83 Consultation Question 75:

Please provide your views below:

No, only essential costs as above.

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

Please provide your views below:

No, there should be no indication that the pregnancy is employment.

85 Consultation Question 77:

Please provide your views below:

No, there should be no indication that the pregnancy is employment.

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

Payment should be for medical costs incurred, not compensation for the consequences of pregnancy.

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:

As a regulated matter, fees also should be regulated.

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:

Purchase of life assurance should be permissible, but not a payment on death for public policy reasons.

89 Consultation Question 81:

Please provide your views below:

No. Any such arrangement would be open to abuse.

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:

No, this is not acceptable on public policy grounds as it would lead to exploitation.

Not Answered

Please provide your views below:

No fee should be permitted for the reasons given above.

Please provide any views below:

No fee should be payable, but essential costs.

91 Consultation Question 83:

Please provide views below:

No fee should be payable.

Not Answered

Please provide your views below:

No fee should be payable.

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:

Yes, but this cannot include a fee.

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 child is not a commodity, therefore any payments other than essential costs such as healthcare are unacceptable on public policy grounds.

95 Consultation Question 87:

Please provide your views below:

A child is not a commodity, therefore any payments other than essential costs such as healthcare are unacceptable on public policy grounds.

96 Consultation Question 88:

Other

Please provide your views below:

An agreement to pay essential costs such as healthcare should be enforceable.

Other

Please provide your views below:

This is another reason why only essential costs should be payable - if some kind of fee is charged, there will be an expectation that additional contractual terms regarding lifestyle etc can be imposed.

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:

On public policy grounds this should not be permissible since it is open to abuse.

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:

On public policy grounds this should not be permissible since it is open to abuse.

No

Please provide your views below:

On public policy grounds this should not be permissible since it is open to abuse.

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

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

No

Please provide your views below:

On public policy grounds this should not be permissible since it is open to abuse.

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?

No

Please provide your views below:

107 Consultation Question 99:

No

Please provide your views below:

On public policy grounds this should not be permissible since it is open to abuse.

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

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

Please provide your views below:

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

No

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

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

Please provide your views below:

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

Please provide your views below:

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

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

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

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

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

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

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

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

Please provide your views below:

Surrogate arrangements should be subject to the strictest controls possible, since otherwise it encourages regarding children and surrogates as commodities open to exploitation.

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:

From: [REDACTED]
To: [REDACTED]
Subject: Re: Law Commissions publish Consultation Paper on Surrogacy
Date: 21 June 2019 11:02:36

Dear [REDACTED]

Thanks. Certainly treat it as a consultation response if that would be helpful: in reflection, however, could I have a slight amendment to the text (highlighted)?

“At their meeting yesterday, they agreed that CLAS should not respond to the consultation because the member Churches have differing views on the morality of surrogacy and could not possibly agree a common position. For example, Roman Catholics would be against it in principle: the [*Instruction on Respect for Human Life in its Origin and on The Dignity of Procreation*](#) issued by the Congregation for the Doctrine of the Faith declares that *Heterologous artificial fertilization is contrary to the unity of marriage, to the dignity of the spouses, to the vocation proper to parents, and to the child's right to be conceived and brought into the world in marriage and from marriage*. I suspect that the views of the other mainstream **Trinitarian** denominations would not be dissimilar; **on the other hand, Quakers and Unitarians, for example, might possibly have no problem with it.**”

All the best,

[REDACTED]

From: [REDACTED]
Date: Friday, 21 June 2019 at 10:51
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Law Commissions publish Consultation Paper on Surrogacy

Dear [REDACTED]

Many thanks for your email. I note you will not be providing a formal consultation response, but would you like your short email below, setting out the reasons for this decision, to itself be treated as formal consultation response?

Kind regards

[REDACTED]

[REDACTED] | **Law Commission**
Research Assistant – Property, Family and Trust Law Team
Tel: [REDACTED] | Web: www.lawcom.gov.uk
Email: [REDACTED]

From: [REDACTED]
Sent: 13 June 2019 19:10
To: [REDACTED]
Subject: Re: Law Commissions publish Consultation Paper on Surrogacy

Dear Professor Hopkins

Thank you for your e-mail – I have been waiting for my trustees to come to a view before making any reply.

[REDACTED]

[REDACTED]

In the circumstances, we must pass on this one. But do please keep us in mind for future Law Commission consultations.

Best wishes

[REDACTED]
[REDACTED], Churches' Legislation Advisory Service

Church House
Great Smith Street
London SW1P 3AZ

Reg Charity No. 256303

From: [REDACTED]
Date: Thursday, 6 June 2019 at 07:49
To: [REDACTED]
Subject: Law Commissions publish Consultation Paper on Surrogacy

Dear [REDACTED]

We are pleased to inform you that the Law Commissions' Consultation Paper on surrogacy has been published today. The full text of the Consultation Paper is available [here](#).

We have also published a summary alongside the full text, which can be found [here](#).

The consultation period opens today, and closes on 27 September 2019. We would encourage you to provide a response to the paper via our online form, available [here](#). Alternatively, we accept written submissions, either by post or via email (surrogacy@lawcommission.gov.uk).

We look forward to engaging with you, and hearing your views over the next few months.

Kind regards,

Professor Nick Hopkins

Commissioner, Law Commission of England and Wales

1st Floor, Tower, Post Point 1.51, 52 Queen Anne's Gate, London SW1H 9AG
(entrance via 102 Petty France)

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.

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-Y5MC-3

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-06-07 23:46:20

About you

1 What is your name?

Name:

[REDACTED]

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

Enter the name of your organisation:

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

This is a personal response

If other, please provide details:

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

Other individual

5 What is your email address?

Email address:

6 What is your telephone number?

Telephone number:

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

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

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

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:

15 Consultation Question 8:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

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

Not Answered

Please provide your views below:

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

Please provide your views below:

18 Consultation Question 11:

Not Answered

Please provide your views below:

19 Consultation Question 12:

Not Answered

Please provide your views below:

20 Consultation Question 13:

Not Answered

Please provide your views below:

21 Consultation Question 14:

Not Answered

Please provide your views below:

22 Consultation Question 15:

Not Answered

Please provide your views below:

Not Answered

Please share your views below:

23 Consultation Question 16:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

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

Not Answered

Please provide your views below:

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

Please provide your views below:

26 Consultation Question 19:

Not Answered

Please provide your views below:

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

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

Please provide your views below:

29 Consultation Question 22:

Please provide your views below:

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

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

Please provide your views below:

33 Consultation Question 26:

Not Answered

Please provide your views below:

34 Consultation Question 27:

Not Answered

Please provide your views below:

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

Not Answered

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

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

Not Answered

Please provide your views below:

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

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

41 Consultation Question 34:

Please provide your views below:

Please provide your views below:

Please provide your views below:

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

Not Answered

Please provide your views below:

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

Please provide your views below:

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

Not Answered

Please provide your views below:

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

Please provide your views below:

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

Please provide your views below:

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

Not Answered

Please provide your views below:

Please provide your views below:

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

Not Answered

Please provide your views below:

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

Not Answered

Please provide your views below:

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

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:

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:

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 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:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 17: Miscellaneous Issues

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

Please provide your views below:

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

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

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

Please provide your views below:

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

Please provide your views below:

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

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

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

Please provide your views below:

By proposing to change the regulations on surrogacy you introduce the sale of both women's wombs and children to a desperate market and reverse women's rights. There is a whiff of modern day slavery to this and how can this be ethical?

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:

From: [REDACTED]
To: [surrogacy](mailto:surrogacy@lawcommission.gov.uk)
Cc: [REDACTED]
Subject: Re: Query Regarding Disability in Intended parents.
Date: 04 July 2019 23:17:42

Dear [REDACTED]

Yes I would definitely be happy for my email to be treated as a formal consultation response. Thank you for taking the time to reply to me.

Kind Regards,

[REDACTED]

Sent from my iPad

> On 3 Jul 2019, at 15:11, surrogacy <surrogacy@lawcommission.gov.uk> wrote:

>

> Dear [REDACTED]

>

> Thank you for your email.

>

> As you are aware, we discuss the possibility of introducing a test of medical necessity for surrogacy at paras 12.77 - 12.95 of our Consultation Paper. We do not make a provisional proposal for this requirement, rather we invite consultees' views on: (1) whether such a requirement should be introduced; and (2) if it is introduced, how it should be defined and assessed.

>

> We suggest a test of medical necessity at para 12.93, to which your comments are very relevant to both the above questions when we come to devise our final recommendations on this issue.

>

> May I treat your email below as a formal consultation response, so that your views can be taken into account once we discuss this issue again after the consultation period closes?

>

> Kind regards

>

> [REDACTED]

>

> [REDACTED] | Law Commission

> Property, Family and Trust Law Team

> Tel: [REDACTED] | Web: www.lawcom.gov.uk

> Email [REDACTED]

>

>

>

> -----Original Message-----

> From: [REDACTED]

> Sent: 01 July 2019 07:45

> To: surrogacy <surrogacy@lawcommission.gov.uk>

> Subject: Query Regarding Disability in Intended parents.

>

> To whom it may concern,

>

> I am hoping to become an intended parent once the law is (hopefully) reformed and have been following the law commissions updated. However having read the most recent summary I am concerned that the document seems to imply the only reason a mother would seek to become an intended parent would be issues regarding her fertility. I would like to know whether disability is being considered in regards to surrogacy law reform?

>

> I have multiple disabilities myself which mean that although fertile, carrying a child to term would be highly

detrimental to my health. In my case - I have Ehlers Danlos Syndrome - a genetic mutation in the collagen gene which causes musculoskeletal issues that would be exasperated by pregnancy such as subluxation and dislocation of The joints (I previously had an ectopic pregnancy and although I was only 7 weeks when it ended the increase in estrogen had begun already to 'loosen' my joints - causing significant pain and if I were to become pregnant there are risk factors common in people with EDS such as early labour and ruptures). I also have adult [REDACTED] for which I am prescribed [REDACTED] that are not cleared pregnancy and so if I were to become pregnant the medical advice is currently to stop taking them - which significantly affect my quality of life and potentially impact on decision making in regards to planning for a new baby.

>

> My fear is that within the law reform there will be a need for medical proof of the 'need' to use a surrogate from the intended mother which will be based solely on physical fertility and it would not consider fertile disabled women who would be able care for a child but not physically carry a pregnancy to term without significant harm to their mental or physical health to be legitimate candidates for intended parents within the proposed new pathway.

>

> If disability is not being considered is there a way to raise the question with the team reviewing surrogacy law and to request they please consider disability as they look towards any potential medical requirements for intended parents?

>

> Kind Regards

>

> [REDACTED]

>

> Sent from my iPhone

>

>

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Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-06-08 14:00:43

About you

1 What is your name?

Name:

[REDACTED]

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

Enter the name of your organisation:

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

This is a personal response

If other, please provide details:

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

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

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

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

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Without this UK law will be undermined by a wealthy elite who can exploit economically disadvantaged women worldwide. This exploitation would be invisible.

Please provide your views below:

The judges would not be sufficiently expert.

9 Consultation Question 2:

Please provide your views below:

The highest level of judiciary should be involved. In fact. Maybe it should be the House of Lords as it should be the exception not the rule.

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:

Exploitation of a poor woman's body shouldn't become a standard routine procedure. Nor should the interest of the baby to stay with the mother who carried her or him be a trivial concern.

There are enough of our species on our planet; spending large amounts of money on extra humans is not in the worldwide public interest of our species to the extent it should have special consideration.

11 Consultation Question 4:

No

Please provide your views below:

A default that gives the wealthier parties preference is just shocking!

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:

As above, defaulting to recognise the typically wealthier commissioning parent above the typically economically disadvantaged surrogate, at a time when she is recovering from pregnancy and birth is misogynistic abuse.

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:

You would be legalising something like slavery, whereby with cash and the right connections and paperwork you can guarantee the purchase of a new human to your specifications.?

15 Consultation Question 8:

Yes

Please provide your views below:

The child should have absolute right to access this information. Clinics and organisations with poor long term out turns should be identifiable.

100 years; or

Please provide your views below:

The impact will be through generations.

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:

It is not in the interest of the child and their future descendants for this to be anonymous. Anonymity in donations has a record of abuse; all the tabloid stories about men with huge numbers of children for instance.

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 be completely prohibited.

18 Consultation Question 11:

No

Please provide your views below:

The week after birth is not a period when the surrogate can make an informed decision. The six month period applicable to adoptions would be much more ethical. And actual Consent, but just silence.

19 Consultation Question 12:

Yes

Please provide your views below:

The woman making the new person , the surrogate should obviously have rights!

20 Consultation Question 13:

Other

Please provide your views below:

Realistically any statement that any woman post partum less than a week has full capacity is completely absurd. There are so many cases of late diagnosis of pnd for instance. Within 6 months it might be possible.

21 Consultation Question 14:

No

Please provide your views below:

I cannot believe that this new human has been commissioned for the very purpose of taking it away from the mother of 9 months, incredibly traumatic, and you are thinking of this person and typed the sentence "no welfare considerations"!!

22 Consultation Question 15:

Yes

Please provide your views below:

It is possible the husband/wife/partner has been abusive and has encouraged this for financial reasons.

No

Please share your views below:

As above, they have not grown the child in their own body. The child is not really a child of their relationship. They could apply for stepparent adoption.

23 Consultation Question 16:

Yes

Please provide your views below:

The surrogate will be allowed to grieve and should not have the expense unless they want to have this responsibility.

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:

We know surrogacy carries higher risks than standard pregnancies and this should be fully scrutinised.

26 Consultation Question 19:

Other

Please provide your views below:

At 6 months

Please provide your views below:

27 Consultation Question 20:

Other

Please provide your views below:

6 months period is relevant . Giving a child one parent is a massive decision when all humans ever have had two.

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

Please provide your views below:

The surrogate should have rights until they give fully informed consent at 6 months,

29 Consultation Question 22:

Please provide your views below:

Judicial.

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

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

Please provide your views below:

33 Consultation Question 26:

No

Please provide your views below:

Automatic shouldn't be applied to children. Children are important. Not just affluent wannabe parents.

34 Consultation Question 27:

No

Please provide your views below:

The law should not default to prioritise affluent wannabe parents above the baby who knows the voice etc of the surrogate.

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:

Other

Please provide your views below:

I would prefer it was illegal. A requirement to register and regulation of this exploitative industry is better than the current practices.

No

Please provide your views below:

Not for profits only.

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:

Medical or psychological qualifications, enhanced criminal records check.

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:

Advertising & website hosting.

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:

Criminal prosecutions of all involved or whose negligence led to the activity.

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:

Would prefer if it was illegal but regulation better than nothing.

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:

It has long been agreed that there is no slavery in the law of England & Wales.

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:

Worse than pimping and adult, its profiting on the sale of the woman's body and the n=baby.

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:

How can you allow the advertising of babies for sale?

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

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

Yes

Please provide your views below:

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

Yes

Please provide your views below:

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

Please provide your views below:

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

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Yes

Please provide your views below:

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

Please provide your views below:

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

In any circumstances.

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:

Of course as the science on mitochondrial dna is not settled.

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

This should be permitted as the science about 3rd person (mitochondrial) DNA is not settled.

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:

No. The surrogate will be post-partum and her health may not put her in a place to make a reasoned decision, and there is no reason why paying intended parents should be in a better position than adoptive parents.

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:

Other

Please provide your views below:

Does this acknowledge the interest of a UK surrogate?

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:

‘Medical necessity’ is less abhorrent than “just convenient” but no adult has a right to be a parent. There are enough humans on this planet.

Please provide your views below:

I am not sure that ‘medical necessity’ can be ever be true, unless it is to create a baby who would be donor to a family member already living, and that is somewhat problematic as the donee cannot consent and the motivation to be a parent can be questioned.

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:

Thank you for spelling out how vulnerable those surrogates are. 18! Agreeing to hand over a living person they made, 9 months later!

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:

Of course the surrogate should have given birth before? How could they realise the enormity of a pregnancy and a delivery and give informed consent without 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?

No

Please provide your views below:

Each pregnancy carries increasing risk to mother and baby, with surrogate pregnancies proven to be higher risk than standard pregnancies, and there should be a low limit.

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:

Surrogacy should not be encouraged, creating humans with the intention of taking them away from the mother who carried them for 9 months is not a public good.

81 Consultation Question 73:

Please provide your views below:

Private, premium, medical care so there is no burden on the NHS.
Life and health insurance for the remainder of their life.

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:

Are we bringing back bloodsports with gladiators dying in the ring too? Is there a tariff for injuries incurred there?

Please provide your views below:

Not Answered

Please provide your views below:

The intended parents would have to pay to the state an amount calculated to cover the lifelong cost to the state of benefits etc for a woman disabled in this process.

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 cover the full costs of causing this death.

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:

The state should apply a levy for the estimated cost to the state of complications.

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:

Payment in advance (into client account or trust)

96 Consultation Question 88:

Yes

Please provide your views below:

The economically disadvantaged should have recourse to law against their exploiters.

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?

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:

Visas cannot be applied for by any other child before birth. This would be granting an extraordinary advantage to the economically advantaged intended parents by surrogacy.

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

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

No

Please provide your views below:

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

Please provide your views below:

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

Yes

Please provide your views below:

It would be good if this guide point out itv was immoral.

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:

No

Please provide your views below:

Other countries are misogynistic and we should not allow their laws to override our own.

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:

It seems odd that the state, and the employers of the surrogate family, should incur cost because of a choice of intended parents.

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:

The surrogate parent has healthcare needs and must be supported, the spouse/partner has no need to bond with a child they have pre-sold.

111 Consultation Question 103:

Please provide your views below:

The intended parents have no medical need for this and taking medicines to induce lactation is for their own benefit rather than the child's as medical traces will remain. There is no reason the employers should have to support their choices here.

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:

Pregnant women should all be supported including surrogates, Intended parents should have no such consideration.

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

Please provide your views below:

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

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

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

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

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

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

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

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

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

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

Please provide your views below:

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

Please provide your views below:

Your survey was biased to achieve a particular result, calling the paying customers "intended parents" and the exploited mother "the surrogate". I am surprised that you expect a biased questionnaire to achieve a reasonable data set for analysis,

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

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)

- ☐ Social worker

5. What is your email address?

Email address:

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

6. What is your telephone number?

Telephone number:

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

In my experience, people who are critical of the commodification of women's bodies through, for surrogacy or prostitution, can be subjected to horrendous abuse, intimidation and threatening behaviour for their beliefs. For this reason, i almost stopped filling in this questionnaire right here. I'm sure many others did.

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, if they must be permitted at all, 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.

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.

[NMN]

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

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

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

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

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

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

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

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

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

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

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

Paragraph 15.53

Consultation Question 80.

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

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

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

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

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

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

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

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

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

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

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

Paragraph 15.60

Consultation Question 82.

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

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

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

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

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

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

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

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

Leave both check boxes blank.

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

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

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

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

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

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

Leave all check boxes blank.

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

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

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

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

Paragraph 15.69

Consultation Question 83.

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

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

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

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

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

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

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

Leave all check boxes blank.

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

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

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

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

Paragraph 15.72

Consultation Question 84.

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

Do consultees agree?

OTHER

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

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

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

Consultation Question 85.

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

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

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

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

Paragraph 15.75

Consultation Question 86.

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

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

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

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

Paragraph 15.76

Consultation Question 87.

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

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

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

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

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

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

Paragraph 15.89

Consultation Question 88.

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

Do consultees agree?

OTHER

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

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

Do consultees agree?

OTHER

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

Consultation Question 89.

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

N/A

Paragraph 16.10

Consultation Question 90.

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

N/A

Paragraph 16.12

Consultation Question 91.

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

N/A

Paragraph 16.52

Consultation Question 92.

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

Do consultees agree?

NO

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

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

Paragraph 16.53

Consultation Question 93.

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

N/A

Paragraph 16.68

Consultation Question 94.

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

Do consultees agree?

NO

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

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

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

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

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

NO

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

Paragraph 16.69

Consultation Question 95.

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

Do consultees agree?

NO

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

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

Paragraph 16.76

Consultation Question 96.

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

N/A

Paragraph 16.77

Consultation Question 97.

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

Do consultees agree?

OTHER

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

Paragraph 16.82

Consultation Question 98.

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

Do consultees agree?

OTHER

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

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's

legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

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

Do consultees agree?

NO

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

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

Paragraph 16.94

Consultation Question 100.

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

N/A

1.135 We invite consultees' views as to whether:

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

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

Paragraph 16.120

Consultation Question 101.

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

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

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

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

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

(2) if reform is needed, suggestions on reform.

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

Paragraph 17.36

Consultation Question 104.

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

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

Paragraph 17.40

Consultation Question 105.

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

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

Paragraph 17.43

Consultation Question 106.

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

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

Paragraph 17.56

Consultation Question 107.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Paragraph 17.76

Consultation Question 108.

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

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

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

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

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

Paragraph 17.80

Consultation Question 109.

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

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

N/A

Paragraph 18.2

Consultation Question 110.

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

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

N/A

Paragraph 18.4

Consultation Question 111.

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

Paragraph 18.6

Consultation Question 112.

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

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

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

N/A

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

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and
- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

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

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

Paragraph 18.11

Consultation Question 114.

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

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

N/A

Paragraph 18.13

Consultation Question 115.

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

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

N/A

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

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

N/A

Paragraph 18.15

Consultation Question 116.

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

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

N/A

Paragraph 18.18

Consultation Question 117.

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

Paragraph 18.20

Consultation Question 118.

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

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

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

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

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

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

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

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

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young

people may feel when they discover that their ‘parents’ not only bought them but took advantage of their birth mothers.

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

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

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

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

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

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

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-06-11 16:12:28

About you

1 What is your name?

Name:

[REDACTED]

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

Enter the name of your organisation:

Surrogacy UK

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

This is a personal response

If other, please provide details:

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

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

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

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

Chapter 6: The parental order procedure

8 Consultation Question 1:

No

Please provide your views below:

I agree with the proposal that legal parenthood should be automatic, without the need to apply for a parental order in the UK but that recognition should be on an individual "country by country" basis to ensure protection for the welfare of the child, and against the exploitation of the surrogate.

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:

[REDACTED]. We are in the process of trying to conceive a child with a gestational surrogate (and now also a very close friend) who we met through the organisation. During this process we have met lots of other intended parents and surrogates at social events. We have yet to meet one person with Surrogacy UK (whether a parent through surrogacy, an intended parent, an actively looking surrogate, a former surrogate or a surrogate's partner) who does not support a change in the law so that parents automatically have legal parenthood from the birth of their child. This change in the law is essential because it reflects the wishes of everyone involved in conceiving through surrogacy - that parents have legal responsibility for their children from birth. It seems sensible that there is, as proposed, a period afterwards during which a surrogate can lodge an objection, but the default should be automatic legal parenthood for the child's parents.

15 Consultation Question 8:

Yes

Please provide your views below:

Surrogacy in the UK can be a very special way to create families and, in our experience, Surrogacy UK has developed very impressive ways of making sure this works well for its surrogates and intended parents. However, there needs to be proper oversight of organisations and clinics so lessons can be learned when things go wrong and improvements can be made for future families going through surrogacy. This starts with proper and formalised collection of records and data.

Another period

Please provide your views below:

Forever - I don't see why there should be a time limit on keeping accurate records of surrogacy arrangements, as long as these are kept by a regulator and confidential details are not published outside of the organisation.

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

Yes

Please provide your views below:

Yes. The welfare of the child is most important and this should be in line with practice at UK clinics - that children born through donor-assisted conception should be able to find out identifying information as adults.

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

Please provide your views below:

Yes. Restricting access to the new pathway in these cases is sensible as it promotes the importance of not using fully anonymously donated sperm and preventing a child finding out identifying information about the donor.

18 Consultation Question 11:

Yes

Please provide your views below:

This is a sensible way of ensuring wishes of surrogates and intended parents are reflected (that parental legal rights are automatic) while ensuring that surrogates have a means of objecting within a period of time that works with current rules around birth registrations.

19 Consultation Question 12:

Yes

Please provide your views below:

It makes sense that in the case of an objection by a surrogate that the pathway would revert to the current system

20 Consultation Question 13:

Yes

Please provide your views below:

These are sensible ways of ensuring that the new pathway can only be used when there are no concerns about a surrogate's consent

21 Consultation Question 14:

Yes

Please provide your views below:

With proper regulation, surrogacy arrangements should be treated like any other form of assisted reproduction - not like a fostering arrangement which requires parents to be vetted.

22 Consultation Question 15:

Yes

Please provide your views below:

It makes no sense in any situation for a surrogate's partner to be the legal parent of a child he or she is not genetically linked to, has not carried and never intended to raise.

No

Please share your views below:

As above. Even if a case falls outside of the new pathway, it makes no sense in any situation for a surrogate's partner to be the legal parent of a child he or she is not genetically linked to, has not carried and never intended to raise.

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:

In these tragic cases the arrangement should continue to proceed in the new pathway. With the proper regulation proposed, the surrogate's intentions will have been clear from the start - that she has no desire to be the child's parent. Forcing the intended parents and the surrogate's family to then go through a parental order process would be gratuitously painful for all involved.

Just as Surrogacy UK currently requires members to set out their wishes in wills before signing the surrogacy agreement, so regulated agencies and organisations under the new pathway should have to ensure surrogates and intended parents have clearly expressed their wishes in case of death. This should include whether the surrogate would have any objections to the arrangement continuing under the new pathway in case of death before the end of the period during which she can exercise her right to object.

26 Consultation Question 19:

Yes

Please provide your views below:

Just as Surrogacy UK currently requires members to set out their wishes in wills before signing the surrogacy agreement, so regulated agencies and organisations under the new pathway should have to ensure surrogates and intended parents have clearly expressed their wishes in case of death. This should include whether or not they would want to be automatically registered as the child's parents on birth

Please provide your views below:

I believe 1 should be applied to reflect the wishes of the parents and the surrogate. An application should be made for the parental order so the parents could be registered as the parents and an order for a guardian to be appointed.

27 Consultation Question 20:

Yes

Please provide your views below:

The provision for notice to be given should specify the ways that the second intended parent is given notice. This should not just be by post as there have been instances in the past where time limited notices by post have been sent to former addresses and not been seen in time (for instance in the case of CCJ notices issued by county courts). Email addresses and mobile phone numbers should also be included.

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 three parent model would not reflect the wishes of surrogates or intended parents so is a poor idea.

29 Consultation Question 22:

Please provide your views below:

It is crucial that there is proper administrative oversight, as proposed. While Surrogacy UK and some other organisations are doing a good job in difficult circumstances, it is unacceptable that these organisations are not currently regulated.

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:

Given that surrogates do not wish to be the child's parent, it does not make sense that they should retain parental responsibility from birth, even for the short period during which they could object under the new pathway. If a surrogate objected, the child would remain with the intended parents during this period so there would be no need for her to have parental responsibility. If she successfully objected, then presumably she would then have parental responsibility, as determined by the court. This seems a more logical approach, given the move to automatic recognition of legal parenthood under the proposed new regulated pathway

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:

There should be a specific requirement for those involved in independent surrogacy arrangements to prove they have met the criteria required by the regulator. I agree with the Law Commission's suggestion that they could provide evidence of compliance with the regulatory requirements to an independent professional, such as a lawyer, who would then make a return on their behalf to the Authority (or a sign/witness a return they have completed themselves providing proof of compliance to avoid lawyers over-charging for a required service).

If those involved would not do this then they should have to apply for a parental order and not come under the proposed new pathway.

Allowing independent arrangements to automatically fall under the scope of the new pathway without requiring proof of compliance would undermine the work to properly regulate UK surrogacy.

I also think the issue of traditional vs gestational surrogacy here is a misleading one. In my experience, the oversight provided by the IVF clinic is minimal and insufficient (often a short counselling session or two during which the counsellor knows less about surrogacy law than the intended parents and the surrogate!). On the other hand, oversight from Surrogacy UK has been invaluable. Independent surrogacy arrangements involving IVF should also have to be endorsed in some other way to fall under the new pathway, either through membership of an agency or organisation or through completion of "evidence of compliance" paperwork, as above.

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

The support we have had from Surrogacy UK has been invaluable. They have worked incredibly hard to provide a safe and supportive environment for intended parents and surrogates, with experienced staff and excellent resources to ensure members understand the law and are guided through the complexities involved with having children through surrogacy.

However, it is unacceptable that organisations like Surrogacy UK are not regulated to ensure their high standards are maintained. There is far too much scope for individuals at the organisation to control when membership applications are processed, who attends events, when information is communicated to members and lots of other little things without any oversight to ensure best practice.

Yes

Please provide your views below:

Although, there should be specific criteria that must be met, whatever their form.

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:

It is important that no organisation is allowed to match surrogates and intended parents for commercial gain, given the incentive this would give them to find more surrogates and pressurise them into going through with arrangements.

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

Yes

Please provide your views below:

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

Please provide your views below:

Yes, within the UK. However, it would be impossible to insist on this internationally for arrangements that do not fall under the new pathway!

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

Please provide your views below:

Sanctions should be criminal. This is a unique opportunity to create the best surrogacy laws in the world, promoting altruism and preventing exploitation. If regulation is to work there cannot be any tolerance for organisations that do not comply.

Those who try to match surrogates with intended parents without being regulated must face criminal sanctions to send the clearest possible message that regulation is a proper new dawn for UK surrogacy.

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:

For regulation to work best, there should be a new regulator dedicated solely to overseeing surrogacy organisations and surrogacy arrangements in all their forms.

If this is impossible because of the relatively small number of surrogacy arrangements, then there should be a small branch of the HFEA with staff dedicated solely to surrogacy rather than surrogacy becoming part of the HFEA's general work.

In our experience the HFEA's forms relating to gestational surrogacy are outdated. For instance, the HFEA forms for IVF clinics do not account for gay male couples, so my husband and I repeatedly had to cross out female pronouns when filling in our clinic paperwork. Intended parents are still considered as gamete donors on forms so we had to fill in paperwork for sperm donors even though our samples were used to create embryos for our own family. This does not bode well for the organisation that is proposed to oversee surrogacy in the UK.

Additionally, as many as a third of UK surrogacy arrangements are traditional surrogacy arrangements, involving no clinics or assisted conception treatments, so it seems odd for the HFEA to regulate these arrangements.

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:

Surrogate-born children should be able to obtain a copy of his or her birth certificate, or identifying information about the surrogate, from the age of 18 (or non identifying information from 16, to match the age at which children born via gamete donation can apply for non-identifying information about the donor).

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:

The information should be identifying information from when they are aged 18 (or non identifying information from 16, to match the age at which children born via gamete donation can apply for non-identifying information about the donor).

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

The rules should mirror those regarding information about gamete donors

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, this should be allowed and surrogates and intended parents should have to agree to this before trying to conceive in order to access the new pathway.

60 Consultation Question 52:

Please provide your views below:

Yes, this should be allowed and surrogates and intended parents should have to agree to this before trying to conceive in order to access the new pathway.

Please provide your views below:

Yes, this should be allowed and surrogates and intended parents should have to agree to this before trying to conceive in order to access the new pathway.

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, so the child can know the full circumstances of their conception

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:

It is important that habitual residence is allowed, as well as domicile, to allow for applications from non-domiciled individuals who live full-time in the UK. Perhaps the best way to do this would be a requirement that at least one of the intended parents has to be resident in the UK for tax purposes and has to remain resident in the UK for tax purposes for at least the following tax year.

Please provide your views below:

Perhaps the best way to do this would be a requirement that at least one of the intended parents has to be resident in the UK for tax purposes and has to remain resident in the UK for tax purposes for at least the following tax year.

65 Consultation Question 57:

Please provide your views below:

Given that single applicants are now allowed, there should be no requirement on couples to prove their relationship. However, there should continue to be an exclusion on two persons who are in a prohibited degree of relationship with one another 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:

67 Consultation Question 59:

Yes

Please provide views below:

I agree with the above but medical necessity should very clearly include the unexpected death of an intended parent genetically linked to a child during pregnancy. This is very important to me and my husband. We have frozen embryos, with some genetically linked to me and some genetically linked to my husband. If a surrogate were to become pregnant with a child genetically linked to me and I died during the pregnancy, there could currently be problems with my husband becoming his child's legal parent. The same would apply with a child genetically linked to my husband if he were to die during pregnancy. In that case I could struggle to become the legal parent of my own child. The law should provide protection for this unlikely but potentially devastating scenario.

Please provide views below:

Yes, as above.

Yes

Please provide views below:

However, as above, there should be an allowance for parental orders for bereaved single applicants resident in the UK who are not genetically linked to a child born through international surrogacy in the rare event of the unexpected death of their partner who was genetically linked to the child.

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

Yes

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner

provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

In both cases an exception should be made for cases where intended parents break up and only the intended parent without a genetic link wishes to be the child's legal parent, or the intended parent with a genetic link dies during pregnancy or before a parental order has been made.

Please provide your views below:

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

Yes

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

Yes

Please provide your views below:

73 Consultation Question 65:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Yes

Please provide your views below:

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

Yes

Please provide your views below:

77 Consultation Question 69:

Yes

Please provide your views below:

Please provide your views below:

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

Please provide your views below:

No, there are some surrogates who have no children of their own.

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:

However, the medical testing should assess whether the risk to the surrogate is too great if she has had many previous pregnancies

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:

However, the surrogate should not have to pay up front and claim expenses back from the intended parents as this could create an unfair financial burden on her and her family. It works well for the surrogate to set up a separate bank account just for surrogacy, for her to estimate expenses in advance and then for the intended parents to put set amounts of money into the account as and when needed before conception and then regularly during pregnancy. The surrogate and intended parents then have a record all payments that she has had to make clearly in one bank account's statements, as well as the receipts that the surrogate keeps for all of the expenses.

81 Consultation Question 73:

Please provide your views below:

Yes, any "unavoidable" purchases because of surrogacy should be paid by the intended parents, not the surrogate. Unavoidable purchases include any costs involved with fertility treatment, such as pre-pregnancy medical appointments, travel to and from the clinic, cycle medication and vitamins that the clinic recommends. It is important that there is understanding that travel expenses can vary. [REDACTED]

Essential costs should include all medical bills and travel related to the pregnancy, before conception, during pregnancy and afterwards. It should also include essentials during the pregnancy such as maternity clothes.

82 Consultation Question 74:

Please provide your views below:

Yes, all costs incurred by the surrogate relating to the pregnancy should be covered by intended parents.

These additional costs can include lots of different items that one might not automatically think about. For instance, pads for when she is taking certain cycle medication, such as progesterone suppositories, and replacement of underwear if needed.

Additional expenses can also include short term childcare costs [REDACTED]. If she and other friends and family were not available it would have been reasonable for us as the intended parents to pay for childcare so they could be taken to school. If this had happened over a weekend it is possible childcare might have been needed.

83 Consultation Question 75:

Please provide your views below:

Yes, I think it is fair that any costs that a surrogate faces in order to have a child for others is covered by the parents. For instance, Surrogacy UK insists on a three month "get to know" period after a surrogate asks to help intended parents. We found this period so important and spent every few weekends together, building our relationship and making sure we agreed on important and difficult questions relating to a future pregnancy, including possible grounds for a termination and our involvement in scans and the delivery. Why should the surrogate pay for, say, travel to the intended parents' home during this period when it is an important part of the process for us to have a child, or for food that we eat together during this time? We have found it

absolutely right that we have paid for these costs during the getting to know period.

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, for instance if a surrogate has to take a day off work for an appointment or a longer period for medical reasons, these loss of earnings should be paid for by the intended parents.

This should also include, where necessary, a surrogate's partner's lost earnings. For instance, in taking a week or two off work after birth to help his or her partner recover, take children to school etc

85 Consultation Question 77:

Please provide your views below:

I don't believe potential lost earnings should be included as this is subjective and impossible to define.

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

Intended parents should not pay set amounts as compensation for having to undergo medical treatments, for pain or for complications. However, they should pay for any insurance that the surrogate wishes to take out relating to the pregnancy. Most importantly, the intended parents should have to pay for a surrogate's life insurance to ensure that the surrogate's family are financially compensated in the event of death.

Please provide your views below:

No, the UK model of altruistic surrogacy should be maintained to prevent exploitation and to reflect the wishes of UK surrogates. Surrogates should not be left out of pocket because of the amazing thing they are offering to do - so all expenses should be paid. However, they should not be paid compensation for doing so as this could lead to women becoming surrogates reluctantly or through coercion. For many surrogates that I have become friends with through Surrogacy UK, being a surrogate is about helping to create a family, as well as fulfilling an ambition of their own to feel like they have achieved and given something extraordinary. Being paid for this would, for them, taint what they have done.

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 pay for life insurance for the surrogate during pregnancy in case of death.

89 Consultation Question 81:

Please provide your views below:

Yes, intended should be able to buy gifts for the surrogate, as they would for any friends. We have become very close to our surrogate, her husband and their children and see ourselves being close friends for life. It would make no sense for us to be banned from buying them gifts, for instance for birthdays, Christmas and anniversaries.

However, any gifts should certainly not be anything excessive that might be seen as a bribe. A provision for any gifts to be reasonable in nature 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:

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:

It would be sensible for a surrogate to have to work out her expected expenses before starting to try to conceive, with the caveat that these can change depending on circumstances.

96 Consultation Question 88:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 16: International Surrogacy Arrangements

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

Please provide your views below:

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

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

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

Not Answered

Please provide your views below:

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

Please provide your views below:

102 Consultation Question 94:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

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

Not Answered

Please provide your views below:

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

Please provide your views below:

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

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:

Yes, amendments should be made to statutory paternity leave, so that the spouse, civil partner or partner of the surrogate is entitled to leave and statutory paternity pay should also be available

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:

Intended parents should be entitled to parental leave like all other parents, including taking time off before birth. This may be important time for medical reasons, such as induced lactation or ante-natal appointments, but also for practical reasons, including preparing for the birth of their child and moving temporarily to an apartment near to the surrogate and her hospital so they can make sure they are at the birth.

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

Please provide your views below:

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

Please provide your views below:

The consultation paper refers to maternity and paternity leave and pay, but not to shared parental leave, which is enjoyed by most couples. Intended parents should be entitled to shared parental leave, rather than adoption leave, so any time off work can be split between both parents if desired.

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. Under the new pathway there would be no need for reform and this would be another reason to adhere to new regulations in order to qualify for the new pathway.

115 Consultation Question 107:

Please provide your views below:

Under the new pathway, health services should have no reason to question the legal parenthood of the intended parents or to have any concerns about the surrogacy arrangement. There should be new rules - not guidelines - setting out how medical staff should handle surrogacy cases. There could be a requirement for a surrogacy coordination meeting during which senior hospital staff are presented with the agreement that has been previously overseen by a regulated surrogacy organisation so they can be sure about the wishes of the surrogate and intended parents. A document signed by a senior hospital clinician could then be produced for the surrogate and the intended parents to keep for future appointments so midwives and doctors working at each appointment can check what has been agreed (for instance, presence at scans and during labour)

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:

We were charged £330 by our clinic in total for three one-hour implication counselling sessions. This included one for me and my husband, one for our surrogate and her husband and one for all four of us together.
The sessions were expensive (£110 each per 60 mins) and not particularly useful in that we all clearly knew far more about surrogacy in the UK, including the legal process and other implications, than the counsellor.
Our blood tests for medical screening cost £1,484 in total for two of us.

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

The requirement of a genetic link means there is a (very small but scary) risk that the one of us who is genetically linked to a child born through surrogacy could die before a parental order is granted and leave the other and our child in legal limbo. This risk could apply to both the new pathway and the parental order route and could not fall under the category of medical necessity.

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

We are delighted with the new proposals, which would solve the problem of the wrong people initially having legal parenthood while maintaining the positives of UK surrogacy being altruistic.

Please provide your views below:

124 Consultation Question 116:

domestic; or

Please provide your views below:

We are in the process of trying to conceive with a surrogate. We anticipate that the full cost, including fertility treatment, payment to Surrogacy UK and expenses, will be about £25,000-£30,000.

Please provide your views below:

We saved money before starting the surrogacy process.

Please provide your views below:

Please provide your views below:

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

Please provide your views below:

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

Please provide your views below:

Surrogacy Consultation Questions

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

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

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

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

This is a personal response

- This is a personal

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.

Consultation Question 17.

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

Do consultees agree?

NO

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

Paragraph 8.79

Consultation Question 18.

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

OTHER

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

Paragraph 8.80

Consultation Question 19.

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

Do consultees agree?

NO

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

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

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

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

Paragraph 8.81

Consultation Question 20.

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

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

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

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

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

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

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

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

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

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

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

Paragraph 8.93

Consultation Question 23.

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

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

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

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

Paragraph 8.120

Consultation Question 24.

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

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

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

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

Paragraph 8.121

Consultation Question 25.

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

NO

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

Paragraph 8.123

Consultation Question 26.

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

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

Do consultees agree?

NO

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

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

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

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

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

Paragraph 8.132

Consultation Question 27.

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

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

Do consultees agree?

NO

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

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

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

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

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

Paragraph 8.134

Consultation Question 28.

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

Do consultees agree?

OTHER

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

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

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

Paragraph 8.139

Consultation Question 29.

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

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

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

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

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

Paragraph 8.140

Consultation Question 30.

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

Do consultees agree?

OTHER

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

Paragraph 9.29

Consultation Question 31.

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

N/A

Paragraph 9.35

Consultation Question 32.

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

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

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

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

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

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

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

OTHER

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

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

Do consultees agree?

OTHER

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

Paragraph 9.61

Consultation Question 34.

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

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

Do consultees agree?

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

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

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

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

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

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

Paragraph 9.62

Consultation Question 35.

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

Do consultees agree?

OTHER

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

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

Paragraph 9.84

Consultation Question 36.

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

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

Paragraph 9.94

Consultation Question 37.

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

Do consultees agree?

OTHER

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

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

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

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

Paragraph 9.95

Consultation Question 38.

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

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

Paragraph 9.97

Consultation Question 39.

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

Do consultees agree?

OTHER

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

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

Paragraph 9.117

Consultation Question 40.

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

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

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

Do consultees agree?

NO

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

Paragraph 9.135

Consultation Question 42.

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

Do consultees agree?

NO

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

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

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

Paragraph 9.145

Consultation Question 43.

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

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

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

Do consultees agree?

OTHER

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

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

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

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

Paragraph 10.85

Consultation Question 45.

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

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

Paragraph 10.87

Consultation Question 46.

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

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

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

Do consultees agree?

YES

1.57 We provisionally propose that:

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

Do consultees agree?

OTHER

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

Paragraph 10.102

Consultation Question 48.

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

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

Paragraph 10.104

Consultation Question 49.

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

Do consultees agree?

YES

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

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

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

Paragraph 10.110

Consultation Question 50.

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

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

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

Do consultees agree?

YES

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

YES, I agree.

Paragraph 10.121

Consultation Question 52.

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

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

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

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

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

Paragraph 10.128

Consultation Question 54.

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

Do consultees agree?

NO

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

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

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

NO

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

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

Do consultees agree?

NO

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

Paragraph 11.58

Consultation Question 56.

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

Do consultees agree?

NO

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

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

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

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

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

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

Paragraph 12.29

Consultation Question 58.

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

Do consultees agree?

OTHER

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

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

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

Do consultees agree?

NO

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

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

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

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

Do consultees agree?

YES

Consultation Question 60.

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

Do consultees agree?

NO

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

Paragraph 12.71

Consultation Question 61.

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

Do consultees agree?

NO

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

Paragraph 12.76

Consultation Question 62.

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

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

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

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

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

Paragraph 12.94

Consultation Question 63.

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

Do consultees agree?

OTHER

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

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

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

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

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

Do consultees agree?

YES

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

Paragraph 12.115

Consultation Question 64.

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

Do consultees agree?

NO

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

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

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

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

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

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

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

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

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

Do consultees agree?

OTHER

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

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

Paragraph 12.133

Consultation Question 65.

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

Do consultees agree?

OTHER

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

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

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

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

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

Do consultees agree?

OTHER

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

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

Paragraph 12.144

Consultation Question 66.

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

Do consultees agree?

OTHER

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

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

Paragraph 13.16

Consultation Question 67.

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

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

Do consultees agree?

OTHER

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

Paragraph 13.44

Consultation Question 68.

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

Do consultees agree?

OTHER

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

Paragraph 13.65

Consultation Question 69.

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

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

Do consultees agree?

OTHER

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

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

OTHER

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

Paragraph 13.73

Consultation Question 70.

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

OTHER

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

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

Paragraph 13.95

Consultation Question 71.

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

Do consultees agree?

NO

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

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

Paragraph 13.99

Consultation Question 72.

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

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

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

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

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

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

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

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

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

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

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

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

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

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

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

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

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

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

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

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

Consultation Question 76.

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

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

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

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

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

Paragraph 15.37

Consultation Question 77.

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

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

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

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

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

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

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

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

N/A

Paragraph 15.47

Consultation Question 79.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Paragraph 15.53

Consultation Question 80.

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

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

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

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

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

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

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

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

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

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

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

Paragraph 15.60

Consultation Question 82.

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

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

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

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

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

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

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

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

Leave both check boxes blank.

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

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

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

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

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

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

Leave all check boxes blank.

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

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

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

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

Paragraph 15.69

Consultation Question 83.

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

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

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

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

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

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

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

Leave all check boxes blank.

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

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

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

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

Paragraph 15.72

Consultation Question 84.

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

Do consultees agree?

OTHER

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

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

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

Paragraph 15.74

Consultation Question 85.

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

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

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

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

Paragraph 15.75

Consultation Question 86.

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

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

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

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

Paragraph 15.76

Consultation Question 87.

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

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

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

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

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

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

Paragraph 15.89

Consultation Question 88.

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

Do consultees agree?

OTHER

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

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

Do consultees agree?

OTHER

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

Paragraph 15.99

Consultation Question 89.

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

N/A

Paragraph 16.10

Consultation Question 90.

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

N/A

Paragraph 16.12

Consultation Question 91.

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

N/A

Paragraph 16.52

Consultation Question 92.

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

Do consultees agree?

NO

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

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

Paragraph 16.53

Consultation Question 93.

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

N/A

Paragraph 16.68

Consultation Question 94.

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

Do consultees agree?

NO

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

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

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

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

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

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

NO

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

Paragraph 16.69

Consultation Question 95.

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

Do consultees agree?

NO

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

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

Paragraph 16.76

Consultation Question 96.

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

N/A

Paragraph 16.77

Consultation Question 97.

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

Do consultees agree?

OTHER

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

Paragraph 16.82

Consultation Question 98.

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

Do consultees agree?

OTHER

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

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

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

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

Do consultees agree?

NO

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

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

Paragraph 16.94

Consultation Question 100.

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

N/A

1.135 We invite consultees' views as to whether:

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

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

Paragraph 16.120

Consultation Question 101.

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

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

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

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

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

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

Paragraph 17.36

Consultation Question 104.

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

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

Paragraph 17.40

Consultation Question 105.

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

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

Paragraph 17.43

Consultation Question 106.

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

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

Paragraph 17.56

Consultation Question 107.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Paragraph 17.76

Consultation Question 108.

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

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

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

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

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

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

Paragraph 17.80

Consultation Question 109.

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

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

N/A

Paragraph 18.2

Consultation Question 110.

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

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

N/A

Paragraph 18.4

Consultation Question 111.

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

Paragraph 18.6

Consultation Question 112.

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

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

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

N/A

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

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

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

N/A

Paragraph 18.8

Consultation Question 113.

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

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

Paragraph 18.11

Consultation Question 114.

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

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

N/A

Paragraph 18.13

Consultation Question 115.

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

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

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

N/A

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

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

N/A

Paragraph 18.15

Consultation Question 116.

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

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

N/A

Paragraph 18.18

Consultation Question 117.

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

Paragraph 18.20

Consultation Question 118.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Surrogacy Consultation Questions

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

ABOUT YOU

1. What is your name?

Name (Required)

██████████

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

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

(Required – Choose one response)

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

If other, please provide details:

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

(Choose one response)

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

5. What is your email address?

Email address:

████████████████████

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

6. What is your telephone number?

Telephone number:



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

Consultation Question 1.

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

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

YES

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

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

Paragraph 6.42

Consultation Question 2.

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

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

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

Paragraph 6.51

Consultation Question 3.

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

Paragraph 6.53

Consultation Question 4.

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

Do consultees agree?

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

NO

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

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

Paragraph 6.58

Consultation Question 5.

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

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

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

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

Paragraph 6.110

Consultation Question 7.

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

6. entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
7. complied with procedural safeguards for the agreement, and
8. met eligibility requirements,

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

Do consultees agree?

NO

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

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

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

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the

expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

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

Paragraph 8.13

Consultation Question 8.

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

Do consultees agree?

OTHER

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

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

Paragraph 8.14

Consultation Question 9.

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

Do consultees agree?

OTHER

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

Paragraph 8.21

Consultation Question 10.

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

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

Paragraph 8.22

Consultation Question 11.

We provisionally propose that:

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

Do consultees agree?

NO

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

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

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

Paragraph 8.35

Consultation Question 12.

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

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

Do consultees agree?

OTHER

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

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

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

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

Paragraph 8.36

Consultation Question 13.

We provisionally propose that, in the new pathway:

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

Do consultees agree?

NO

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

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and

with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

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

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

Paragraph 8.37

Consultation Question 14.

1.15 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 of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

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

N/A

Paragraph 16.12

Consultation Question 91.

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

N/A

Paragraph 16.52

Consultation Question 92.

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

Do consultees agree?

NO

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

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

Paragraph 16.53

Consultation Question 93.

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

N/A

Paragraph 16.68

Consultation Question 94.

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

Do consultees agree?

NO

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

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

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

Do consultees agree?

NO

We provisionally propose that:

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

Do consultees agree?

YES

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

NO

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

Paragraph 16.69

Consultation Question 95.

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

Do consultees agree?

NO

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

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

Paragraph 16.76

Consultation Question 96.

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

N/A

Paragraph 16.77

Consultation Question 97.

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

Do consultees agree?

OTHER

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

Paragraph 16.82

Consultation Question 98.

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

Do consultees agree?

OTHER

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

Paragraph 16.93

Consultation Question 99.

We provisionally propose that:

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

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

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parent hood' 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>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-06-17 23:47:27

About you

1 What is your name?

Name:

[REDACTED]

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

Enter the name of your organisation:

[REDACTED]

I am also a registered midwife with the NMC.

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

This is a personal response

If other, please provide details:

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

Medical practitioner or counsellor

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

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

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

No.

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Please provide your views below:

I agree with this statement

9 Consultation Question 2:

Please provide your views below:

Ideally cases as they develop should be seen as soon as possible to avoid delay however where possible or where complex issues occur, it would be prudent to continue with a named high 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:

Other

Please provide your views below:

I do not understand this question.

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:

Pregnancy and Birth are huge changes and the mother should never lose her parenthood until such time that she has recovered from birth and can consent to giving up the child. The parenthood of the birthing woman must not be removed by anyone but the mother when she is of sound mind.

15 Consultation Question 8:

Yes

Please provide your views below:

Records should be kept- and not amended after the fact so that the rights of the child and their health can not be compromised.

100 years; or

Please provide your views below:

100 years allows the child to live their life with reasonable amount of time to check back to these records and should such biological disorders become relevant, information can be obtained and shared to avoid harm and inadvertent inbreeding in the future.

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:

This would not be in the best interests of the child. Anonymous gametes should not be utilised in surrogacy.

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

Please provide your views below:

There must always be a way for the child created to track back their origins to named individuals to avoid biological and psychological harm to the child.

18 Consultation Question 11:

No

Please provide your views below:

This proposal is clearly open to abuse. The postnatal period should be 6 weeks from the date of birth or 6 weeks from the date the mother regains consciousness and the responsibility of ensuring the birthing woman consents to giving the child to the prospective parents should lie with the lawyer of the prospective parents who, if they coerce the birthing woman, will lose their license. The responsibility to ensure the birthing woman fully understands what she is consenting to must be borne by a legal professional who is regulated by a legal authority so that both the child and the new mother who will

be vulnerable by virtue of having given birth, are protected from abuse.

19 Consultation Question 12:

No

Please provide your views below:

The legal parent of the child at birth must remain the birthing mother until such time as documents confirming post birth acknowledgement of the surrogacy agreement are met.

Even if it is highly likely that the sperm donating surrogate parent is the biological parent, this must be proved- Not assumed.

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

No

Please provide your views below:

There must be a welfare assessment prior to the child being given to prospective parents to ensure their welfare is fundamental to the order being accepted.

22 Consultation Question 15:

Yes

Please provide your views below:

In this specific set of circumstances, biological parenthood must be based on the DNA of the living child.

No

Please share your views below:

As above

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:

In the case of the surrogate dying, they must be legally acknowledged as the surrogate birth mother and there should be notes on how the child is presumed to have been conceived prior to the prospective parents applying for care of the child.

26 Consultation Question 19:

No

Please provide your views below:

The prospective parents can only be legally acknowledged once they have been granted parental responsibility of the child. Their names should be recorded if their genetic code is assumed to have been utilised to create the child. I see no benefit to anyone of this idea.

Please provide your views below:

I agree with statement 2

27 Consultation Question 20:

Other

Please provide your views below:

After birth applications will be evaluated and if either prospective parent does not want to go ahead, they should not. Only after birth should arrangements be finalised.

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 3 parent situation involving prospective parents and the surrogate may in some cases be in the best interests of the child and if the surrogate (birthing woman) agrees, this should be made possible.

If temporary, at such time the surrogate wishes to rescind their parental responsibility to the prospective parent(s), this must be agreed by all parties.

29 Consultation Question 22:

Please provide your views below:

Until well established there should be judicial overview and re-evaluation in two years as to if this new pathway works.

30 Consultation Question 23:

Please provide your views below:

I believe a social worker should be consulted in each case so that bespoke needs of each individual child are upheld as the highest priority

31 Consultation Question 24:

Please provide your views below:

I believe the social worker should advise the court on a case by case basis

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:

34 Consultation Question 27:

No

Please provide your views below:

Responsibility for the child must remain with the birthing mother until a parental order is agreed by all parties of sound mind.

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:

Where possible yes

Please provide your views below:

A electric record

40 Consultation Question 33:

Yes

Please provide your views below:

Yes

Please provide your views below:

Especially important with a view to safeguarding children and vulnerable people

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;; providing data to the regulator and to such other person as required by law.

Please provide your views below:

Please provide your views below:

Whistle blowing, safeguarding and leading with health, social care and where relevant, the police.

Please provide your views below:

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

No

Please provide your views below:

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?

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?

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:

I believe these records should be kept for 100 years and ALWAYS available to the child as it is in their best interest. Where the child dies, but has had children of their own, provision should be made to allow biological children access to their parents parental records include information about gamete donors and surrogates

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:

Birth parents should be those that physically gave birth to the child ONLY.

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:

Provision should and could be made to include names of donors, surrogates and previous names of parents

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:

Good idea

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:

I think any child should have free access to information regarding their birth- it is their right.

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:

Great idea- 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:

In any event.

Please provide your views below:

In any event

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:

Definitely. This is especially important when safeguarding children.

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:

No

Please provide your views below:

Absolutely not.

Chapter 17: Miscellaneous Issues

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

Please provide your views below:

Yes.

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

No

Please provide your views below:

The pregnant and recently delivered woman and the parents of a newly adopted child or child gained through surrogacy must have statutory parental leave to support transition and wellbeing

111 Consultation Question 103:

Please provide your views below:

More leave is required. (Paid)

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:

Absolutely!

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

Please provide your views below:

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

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

An overseeing department nationally is an idea

Please provide your views below:

Please provide your views below:

Employ more midwives. PLEASE

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

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:

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.

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.

IN PRACTICE I BELIEVE THE PROBLEMS SO MANIFEST IN ANY SYSTEM PROPOSED TO PROTECT THE VARIOUS PARTIES, THAT SURROGACY SHOULD BE MADE ILLEGAL IN THE UK.

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

Paragraph 8.13

Consultation Question 8.

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

Do consultees agree?

OTHER

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

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

Paragraph 8.14

Consultation Question 9.

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

Do consultees agree?

OTHER

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

Paragraph 8.21

Consultation Question 10.

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

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

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

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

- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

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

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

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

Paragraph 8.35

Consultation Question 12.

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

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

Do consultees agree?

OTHER

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

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

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

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

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

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

Do consultees agree?

NO

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

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

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

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

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Furthermore I believe that if surrogacy is allowed for women who have never given birth for their own children, it suggests that surrogacy is a valid 'work' choice (which it is not) further exploiting vulnerable women.

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.

This proposal suggests that the new pathway has been particularly ill-thought out, with scant regard being paid to the health and wellbeing of the surrogate mother or the safety and health of the baby, given that a high numbers of pregnancies risks increase for both (grand multi parity risks).

This suggestion would further normalise the idea of surrogacy as 'work' and exploit vulnerable women.

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.

Furthermore, safeguards should be in place to ensure no mother is coerced into a surrogacy arrangement by family pressure or other means. In practice, I don't believe it is possible to actually ensure this and therefore believe surrogacy should be outlawed.

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.

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child’s country of birth.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

Surrogacy should be outlawed. The impact on the NHS is not justified.

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 specifically¹⁸ addressed in this chapter, or the preceding chapters, of this paper.

I find it flawed that the consultation starts from a position of accepting that surrogacy should be legal and avoids asking any question to allow people to voice their opinions on this first, critical point. I am filling in this questionnaire as someone who has not been an intended parent or a surrogate, but I have been asked by a family member about the possibility of acting as a surrogate and therefore have considered the issues carefully and at length in a personal capacity as to how it would affect me. I am disappointed that in question 4 this is not a category that is considered to be listed out, instead only separately asking if a respondent is a surrogate. I considered that I could not act as a surrogate and on came to the strong conclusion that surrogacy should be outlawed. This is based on the fact that the downside of outlawing a very small number of arrangements that *may* have no obvious, immediate negative outcomes for surrogate or baby, is massively outweighed by the real and severe harm that is created by allowing surrogacy and in particular commercial surrogacy that will exploit vulnerable women and will likely have negative consequences for the baby.

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

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-06-30 21:41:32

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

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:

Providing parental responsibility at the first appropriate step provides clarity and reassurance to both the surrogate and the intended parents. Parental responsibility is a serious obligation. Unnecessarily placing parental responsibility on the surrogate puts unnecessary stress on her, in some cases making her feel responsible for another family's child.

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:

A common concern for many women who wish to be surrogates, is the worry that intended parents could walk away mid-pregnancy, leaving her with parental responsibility for the child. It would be profoundly immoral for intended parents to do so, but the law currently implies that they can. The law should not support immoral behaviour. The law should be amended in line with the proposals. This will protect surrogates and provide reassurance that their charitable behaviour will not expose them and their families to risk.

15 Consultation Question 8:

Yes

Please provide your views below:

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

Children should have an absolute right to information about their genetic parentage. Especially in the modern world of DNA testing organisations, anonymity for genetic parents is becoming almost impossible to achieve anyway. The law should therefore support the rights of children to know their ancestry, as well as not act in a way that can easily be overcome through the incoming tide of modern DNA testing.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

Yes. Children should have an absolute right to information about their genetic parentage. Much research on families formed by adoption or gamete donation has found no negative impact on the children, except where the information is hidden and the child feels lied to. Especially in the modern world of DNA testing organisations, anonymity for genetic parents is becoming almost impossible to achieve anyway. The law should support the rights of children to know their ancestry, as this is in both the child's interests, and the long-term interests of family stability. The law should not support or encourage families who seek to withhold genetic parentage information from their children.

18 Consultation Question 11:

Yes

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:

Other

Please provide your views below:

As proposed, where the surrogate has objected, she should continue to have parental responsibility unless a legal process changes the situation.

However, in both gestational and traditional surrogacy, the surrogate's spouse/civil (if she is in a marriage/civil partnership) partner is not a genetic parent of the child. Despite this, under current law, the surrogate's spouse/civil partner acquires parental responsibility and is named on the birth certificate. The position of the spouse/civil partner is illogical, and counter to what most people would believe the birth certificate should show. The spouse/civil partner is not responsible for the surrogate's decision to help another couple create a family - she is a capable woman able to make her own decisions. The intended parents have clearly greater responsibility for the decisions around bringing the baby into the world than the spouse/civil partner. Therefore the spouse/civil partner should not automatically be held to have parental responsibility for the child created as a result of those decisions.

There is an argument that important safeguards are created by enabling the surrogate to remain as legal parent, unless a legal process changes that status, even in the case of gestational surrogacy. That argument does not apply to her spouse/civil partner. Therefore an alternative option, in addition to the proposals, is to enable the intended parent, where they are the genetic father, to have parental responsibility and be named on the birth certificate as the father in all cases. This preserves the safeguards the surrogate requires, provides clear information to the child on their genetic parentage, and avoids placing parental responsibility on the spouse/civil partner where this does not align with the moral responsibility for the birth.

No

Please share your views below:

Similar answer as above. The spouse/civil partner is not responsible for the surrogate's decision to help another couple create a family - she is a capable woman able to make her own decisions. Moral responsibility for the child is more attributable to the intended parents than the surrogate's spouse/civil partner. The spouse/civil partner should not automatically be held to have parental responsibility for the child created as a result of decisions by other people. Holding them to have parental responsibility is counter to what most people would believe the outcome should be.

The intended parent, where they are the genetic father, should be named on the birth certificate as the father. Whilst preserving safeguards for the surrogate, this provides clear information to the child on their genetic parentage and avoids placing parental responsibility on the spouse/civil partner.

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:

Other

Please provide your views below:

I agree with the proposals, with an addition that the proposed written surrogacy agreement required under the new pathway, should require a section on who the intended parents wish to look after the child in the event of their death during pregnancy. As this will form part of the agreement that all parties will have received advice on, it will help avoid any conflict between the surrogate and the intended parents' families at what will be an incredibly emotional time. It will also be an invaluable record for any court needing to adjudicate on who who should have parental responsibility for the child in these circumstances.

Please provide your views below:

Whichever outcome is chosen should respect the child's right to knowledge of their genetic parentage, and not encourage or enable blocks to the child exercising that right. Therefore care needs to be exercised to ensure that there are no loopholes through which the existence of the surrogacy arrangements (and donor gametes if needed) is hidden.

27 Consultation Question 20:

Other

Please provide your views below:

I agree with the proposals. However provision needs to be made to cover the situation of the death of one intended parent during the pregnancy.

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

29 Consultation Question 22:

Please provide your views below:

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Not Answered

Please provide your views below:

34 Consultation Question 27:

Yes

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Not Answered

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

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:

So long as an independent surrogacy arrangement can abide by the checks and requirements of the new pathway, there is no good reason to exclude them. Inclusion in the new pathway may provide greater certainty and clarity for independent surrogacy (often carried out within a family, or between friends) than at present.

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:

It would be great to provide a specific listed responsibility for the responsible individual to consider the needs of any children born through a surrogacy arrangement when operating the organisation. This is implicit in the current requirements, but making it explicit would assist demonstrating clarity of focus of these organisations.

Please provide your views below:

There is a tendency for regulatory bodies to over-require specific levels of qualifications, even where there is no evidence those levels of qualifications lead to greater competence. There is currently no qualification that provides the skill set needed to operate a surrogacy organisation, therefore there is no qualification that is relevant.

There should, instead, be relevant dis-barring requirements. These should be based on the same dis-barring requirements for working with vulnerable adults and children (e.g. enhanced criminal records checks etc.).

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:

It depends on the nature of the term "matching and facilitation". It is a common experience in independent surrogacy arrangements for a surrogate to be introduced to the concept by a joint friend/family member of the intended parents. Essentially the intended parents discuss with friends and family members that they are considering surrogacy, one of those friends/family members discusses the situation with other people, and one of those other people wishes to help the intended couple. Care should be exercised to make sure that friends and family members would not fall into the definition of providing a regulated service, when they are just carrying out normal day-to-day gossip and/or introducing one friend to another. A provision should remove any obligation on regulatory requirements where the person involved has only "matched" intended parents to a surrogate in a one-off scenario, where those parties were already known to the person.

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?

Other

Please provide your views below:

There are good arguments why the agreement should be unenforceable. However it is extremely unusual to create voluntary legal agreements, entered into freely by both parties, that only bind in one direction. To do so risks creating a strong imbalance in the relationship between the parties. Intended parents have often been through very emotionally challenging experiences (e.g. traumatic medical or fertility treatment). They are potentially at risk if put into a strongly imbalanced relationship.

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:

Impartial advice when working through a surrogacy arrangement is invaluable. Organisations providing advice and support to intended parents and surrogates help prevent anyone being taken advantage of, and ensure appropriate behaviour. There are voluntary organisations carrying out good work, but the existence of professional services in this field should also be encouraged.

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:

In the UK surrogacy is a charitable and altruistic exercise. Other charities are able to advertise for supporters, therefore so should surrogacy organisations.

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:

Children should always have a right to information on their genetic parentage. The original birth certificate should therefore, where possible, record the genetic parentage of the child. Legal parentage and parental responsibility can be demonstrated by a later process. However birth certificates should provide clarity to the child as to the circumstances of their birth.

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:

Absolutely agree with the rights of surrogate-born children to establish whether they have a family relationship with another people before they get intimate. It is common, but not 100%, for surrogates to remain close to the families they have helped. It is therefore common for surrogate-born children to feel close to their surrogate and the surrogate's family. They would therefore wish to know whether a person they were becoming intimate with, was part of that extended family.

59 Consultation Question 51:

Yes

Please provide your views below:

Children should have an absolute right to knowledge of their genetic relationships - the law should not enable the withholding of this information. It is always possible that genetic siblings/half-siblings may not both want to stay in touch once they know about each other. However that is the same as any family and is a decision each sibling/half-sibling can take once they know of the existence of the other.

Please provide your views below:

It is common, but not 100%, for surrogates to remain close to the families they have helped. It is therefore common for surrogate-born children to feel close to their surrogate and the surrogate's family. It is therefore possible for one surrogate-born child to know their surrogate, but not any other children that same surrogate may have born. They deserve the right to know about that extended family of surrogate-born children.

60 Consultation Question 52:

Please provide your views below:

Children should have an absolute right to knowledge of their genetic relationships - the law should not enable the withholding of this information. It is always possible that genetic siblings/half-siblings may not both want to stay in touch once they know about each other. However that is the same as any family and is a decision each sibling/half-sibling can take once they know of the existence of the other.

Please provide your views below:

This is a similar answer as to finding out about other surrogate-born children that the child is genetically related to / related to through being born of the same surrogate. Whilst there is the argument that the child of the surrogate is in a separate category, they are all children born of the same mother. They have a right to know about each other.

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:

Absolutely. Children have a right to know how and why they were brought into the world. The law should not be able to be used to enable covering up that information.

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:

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?

Other

Please provide views below:

I do not agree with the assumption in the question: that the breakdown in the relationship of the intended parents would result in one not acquiring parental responsibility. Both of the intended parents were involved in commissioning the surrogacy arrangement and both should be responsible for the child's welfare. An intended parent who no longer wishes to be present should be treated in law as any parent who abandons their family - e.g. court orders for maintenance/ contact/ etc.

70 Consultation Question 62:

Please provide your views below:

Whilst supportive of the requirement to prevent 'social surrogacy' (no matter how unlikely), using the phrase "medical necessity" will create the potential for future conflict and misunderstanding of the regulation (e.g. around gay couples). The consultation document also uses the phrase "biological or medically unable to carry and deliver a healthy baby". Switching to using this phrasing would provide clarity and include all potential couples the definition is wished to cover.

Please provide your views below:

Assessment should be brief and require the certification of a relevant medical professional. It will usually be straightforward for the medical professional to make this statement without further investigation (e.g. with a gay male couple it would be extremely straightforward, with a woman already treated for infertility it would require a brief read of her medical notes).

To ease the process, the certification should be able to be provided by the clinic providing the fertility services.

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

Children have a right to knowledge of their genetic parentage, therefore making this information available through a central register enforces this right.

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:

Other

Please provide your views below:

It is considered good practice among current surrogacy organisations for surrogates to have "completed their own family" before becoming a surrogate. This is because any pregnancy can go badly wrong and result in the infertility of the mother. It would be profoundly wrong for a surrogate to lose the ability to have her own children, by carrying a child for someone else. Therefore in addition to a minimum age requirement, consideration should be given to the requirement for the surrogate to declare she has completed her own family / has considered the potential for an impact on her own future ability to have children

I appreciate that making this a requirement is an intrusion into the rights of the surrogate to make her own decisions over her own body. However it is a practical requirement that some organisations already operate, given how very sensitive most people involved in surrogacy are to the risk of infertility.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Not Answered

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Other

Please provide your views below:

I agree that the surrogate and intended parents require advice. However it depends on the definition of "legal". Many intended parents at present do not receive individualised advice from a legally-qualified individual. This is sufficient as the law around the surrogacy agreement can be discussed by a competent employee / volunteer at a surrogacy organisation using standard factsheets. Imposing the requirement for an in-person briefing from a legally-qualified individual would increase costs to all parties without necessarily improving the awareness of the individuals.

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:

Similar to the response to Consultation Question 65, many surrogacy organisations operate the requirement that the surrogate has already completed their own family. This is to prevent the surrogacy potentially ending her ability to have children of her own, should the pregnancy go badly wrong. This alternative requirement will both prevent surrogacy threatening the ability of surrogates to create their own families, and also reduce the risk of a surrogacy arrangements causing harm to women (as those most likely to experience harm will have already experienced it during their own pregnancy).

There is always the possibility of a new medical concern arising, especially with surrogates who wish to remain child-free themselves, and carry a

surrogate baby as their first pregnancy. However the ability for women to chose to help other in a way that puts themselves at risk is a key element of personal choice.

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:

So long as a woman is medically safe to carry out a surrogacy, and chooses to help people that way, there is no benefit to regulation stopping her from carrying out her wishes. She is clearly the best person to decide on what she chooses to do with her own body.

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:

I believe that any decision over the potential regulation of payment/ expenses/ gifts to surrogates should weigh the views of surrogates as the most important factor. Women who choose to become surrogates are using their bodies to carry out an amazing act for someone else. They should get the final say over this, not any campaign group, political organisation, or the intended parents.

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:

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 provide your views below:

There is the possibility that providing full access to maternity/paternity pay and leave to both the surrogate and her partner, and to both the intended parents, risks public support for surrogacy. This is especially in the light of potential increases in maternity/ paternity/ shared parental leave. The perception may occur that surrogacy places an unfair burden on the colleagues of a surrogate, especially a surrogate who assists multiple intended parents, when this burden is triggered by the intended parents (who are unlikely to work for the same organisation as the surrogate).

Resolving this concern would require a detailed consideration of the options available to ensure that intended parents do not impose unfair costs on wider society through surrogacy. However the need to consider this situation will grow as the number of surrogate pregnancies continues to grow.

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:

The proposals would neither increase nor decrease accessibility, in terms of our ability to have children, as we are already involved in the process. However, but providing greater clarity to all involved, the new pathway will significantly reduce concerns held by surrogates / potential surrogates. This is a significant benefit of itself. It may also increase the number of women who are willing to be surrogates, however the benefit to surrogate peace-of-mind is worth achieving irrespective of whether it increase the number of women willing to be surrogates.

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

[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)

Legal 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:

██████████

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:
- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
 - (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
 - (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:
- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
 - (2) complied with procedural safeguards for the agreement, and

(3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in

surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or

parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

- 1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

- 1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

- 1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;

- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit.

There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-07-13 09:05:00

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Surrogate

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

No

Please provide your views below:

I think international arrangements via a permitted country should be allowed for within a standard parental order process and incur the same costs for fairness. If the ip's use a non permitted country then maybe the high court with additional checks is needed

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

The current parental order process in practice is perfectly adequate with the current level of judiciary judges, I have been through 3 parental orders as a surrogate

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, parental responsibility should only be awarded once the parental order checks and processes are complete whether that be before or post 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:

The process should always be open and transparent to those involved

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

Absolutely! The legalities should be complete before the birth so that the child is born into a secure legal position with no question over who the parents are and who holds the legal and/or moral rights. This would make life considerably easier for both families and the health professionals involved in the pregnancy, birth and post birth care.

15 Consultation Question 8:

Yes

Please provide your views below:

Another period

Please provide your views below:

I think 25 years or maybe 30 would be long enough so that the child born through surrogacy can gain access to the records should they choose to. 100 years seems excessive for holding such personal data

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

I do not agree with any anonymous donation of eggs or sperm or embryos. Every human deserves to know, at their choice, what their genetic roots are

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

Same reply as q.16

18 Consultation Question 11:

No

Please provide your views below:

A parental order should be applied for and completed before the birth and once granted, before the birth, there is no right for the surrogate to change her mind. It is not her child at any point during a surrogacy arrangement and this needs to be reflected in law. I as a surrogate do not want the legal responsibility of the child at any point, my legal rights are over my body not over the baby.

19 Consultation Question 12:

No

Please provide your views below:

If the surrogate wishes to object then she can do so but it should be that the surrogate has to fight to gain legal responsibility from the intended parents not that the intended parents have to fight to gain the legal responsibility from the surrogate. At the point of the surrogate signing and committing to a surrogacy agreement/arrangement (before conception of a surrogate baby takes places) the legal rights of the intended parents should be recognised and the surrogate signing is her agreeing she has no legal rights over the conceived child

20 Consultation Question 13:

Not Answered

Please provide your views below:

21 Consultation Question 14:

Other

Please provide your views below:

Any welfare assessment should be carried out on the same basis as if the baby was born to the intended parents naturally without any surrogacy arrangement. The parental order should be completed during the pregnancy and once granted the intended parents should be treated exactly the same as any other parent who had conceived carried and birthed their baby

22 Consultation Question 15:

Yes

Please provide your views below:

The surrogates partner in whatever situation, married or otherwise should never be recognised in a legal capacity. It is not their child in any way

No

Please share your views below:

As per q.22. My husband hated that he was legal seen as the child's father. He found it weird and upsetting, he didn't want the responsibility or legal implications for a child that was another mans!!

23 Consultation Question 16:

Yes

Please provide your views below:

In any and all circumstances the intended parents are the parents biologically and morally and the signing of a surrogacy agreement before conception should define that even if a parental order process hasn't been completed by the time of a still birth

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:

Another reason why the surrogacy agreement before conception should be legally binding. It would avoid complications should the surrogate die at any point

26 Consultation Question 19:

Yes

Please provide your views below:

Yes and the wills drawn up before conception alongside the surrogacy agreement should stipulate the legal guardians should the intended parents die and should be legally enforced

Please provide your views below:

See q.26 reply

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:

No the surrogate is a surrogate. She is not an intended parent in any capacity and should not have legal rights over the baby only her body

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:

Surrogacy is surrogacy whether one or both of the parents are biologically related. I believe surrogacy with donor embryos should also be treated the same as the arrangement entered into is still on a surrogacy basis

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

I have carried a gestational surrogate baby and two traditional surrogate babies. The appropriate health screening, counselling and legal advice took place. It was in a less formal manner and arranged ourselves rather than via a clinic but it was simple and easy to do. I had support and guidance via my independent groups and surrogate and intended parent friends through the surrogacy community who held vast amounts of direct personal experience, much more than any professional working in a clinic had

39 Consultation Question 32:

Please provide your views below:

Yes of course! A surrogacy arrangement is a surrogacy arrangement and the law has to be fair and equal to all

Please provide your views below:

Everyone in the land has to follow whatever laws are set out. As long as the guidance and relevant forms and process are detailed with easy access on the government website just like the current parental order process is. There should continue to be no need for a lawyer to be involved to keep the costs low and make surrogacy as accessible as possible

40 Consultation Question 33:

Yes

Please provide your views below:

Any organisations should be regulated and a surrogacy one given its nature should definitely be regulated. I know of so much bad behaviour that has occurred within all of the current surrogacy organisations, hence I became an independent surrogate, there is a desperate need for regulation

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:

We do not want to become like America. We do not want agencies. We want organisations who provide guidance and support and who uphold the legal and moral practices that should occur for altruistic surrogacy. The costs have to be kept low for intended parents to make surrogacy accessible and also to stop surrogacy becoming a business transaction.

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:

A supportive community in which surrogates and intended parents can be educated on best practice for a safe journey and also meet those on both sides to form friendships that may lead to matching. Advertising should be allowed alongside a law in which surrogacy is kept altruistic

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:

Independent surrogacy and the independent community is a perfectly legitimate way of pursuing surrogacy. It keeps costs low making surrogacy more accessible and it allows freedom of choice and stops organisations playing god with people. The law should be clear enough that an organisation is not necessary but just an option that may suit some people in their journey.

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:

There would have to be clear definitions of what an organisation would be defined as within surrogacy. An independent Facebook group for example can offer everything an organisation can but they are run by people who are currently or have pursued surrogacy and set it up for like minded people to meet and gain information and support with no payment involved but more as an interest group. Would someone advertising in that group and a match coming about then make the group an organisation even though no money was involved? I think where fees have to be paid yes that should be regulated and if they break any laws it should be criminal but it will have to be very clear what constitutes an organisation as to not impact negatively or confusingly on independent groups and independent surrogacy

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

No

Please provide your views below:

A surrogacy agreement should be enforceable and the basis of the parental order

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:

There should be fees for joining an organisation but that should include any help support or guidance for negotiating facilitating and advising else the organisation are just adding costs on top and becoming a profit making organisation and will basically be an agency and we are then on the slippery slope of becoming like the American surrogacy model

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:

There should be no way that the intended parents can hide the origin of the baby's birth. Every human deserves to know how they came to be

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 want to see recognition of both the intended parents upon registration, the surrogate should be recorded but as a surrogate not as parent 1 and the surrogate's husband or partner should never be allowed 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:

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:

The information should be identifying. The child should have access to those involved in giving them life should they choose to access it. It's vital for good mental health

57 Consultation Question 49:

No

Please provide your views below:

It should be 18 for everything

Please provide your views below:

No they should have access to everything upon 18 and not before. If the parents were to consent under 18 then they can just tell them the information themselves

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 they should be able to access that information

59 Consultation Question 51:

Yes

Please provide your views below:

Absolutely for good mental health

Please provide your views below:

Yes it's vitally important they have all the information

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. If they are not part of a granted parental order then they don't go on the register unless they are genetically related

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. The parental order should have to be completed by 24 weeks gestation ie when the baby is classed as viable for life

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:

Single people should have the same legal rights to pursue surrogacy across the board

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:

Double donation should be allowed for surrogacy, it should not be anonymous and it should only be a last resort upon medical advice

Please provide views below:

Yes

No

Please provide views below:

No the law should be the same for domestic and international

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 legal rights and security of the child should come first

70 Consultation Question 62:

Please provide your views below:

Surrogacy should only ever be used because of medical necessity

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:

There should be no specific limit. It should be determined during the parental order process whether the intended parents are fit in every way and age should not be a stand alone barrier

Other

Please provide your views below:

I think the minimum age should be 25. Surrogacy is hard and can be expensive and requires real grounding in the lives of those involved. To think an 18 year old can pursue surrogacy as a surrogate or intended parent is madness

73 Consultation Question 65:

No

Please provide your views below:

A surrogate should be a minimum of 25 and commit to being finished with her own family

No

Please provide your views below:

Minimum of 25

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Please provide your views below:

Sti's checks should be required by law

75 Consultation Question 67:

Other

Please provide your views below:

Yes but only for a first journey and the counsellor should have direct experience of being an intended parent or surrogate. My previous counselling sessions were completely pointless and I ended up educating the counsellor as they have no experience. The best counselling I got was always through my experienced friends in the surrogacy community. You just can't understand and truly discuss the ins and outs with people who haven't been there and done that. The whole process is a purely emotional one and a counsellor needs to understand that and it can only be gained by experience

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:

Yes but the legal advice can be gained from research of the relevant government web pages and the surrogacy act. It should not have to be paid for or specifically from a lawyer as long as proof can be shown of the research

77 Consultation Question 69:

Yes

Please provide your views below:

Please provide your views below:

Offences on the current barring list should be preventative

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. It is a risk that all involved take and whether she has given birth before or not doesn't mean the next birth will go well or not. You just never know with pregnancy and birth and it's a risk you take. However a surrogate should always be able to say she has completed her family and if she has no children yet she should be comfortable with the idea that the surrogacy pregnancy could be her one and only.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Yes

Please provide your views below:

As long as she is medically cleared to carry again by her gp then there should be no specific limit on pregnancies

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on an allowance;

Please provide your views below:

Expenses is complex. You cannot provide a receipt for a lot of expenses incurred. The accounting side of things would require a level of intelligence and time dedication and ultimately a loss of money for many surrogates as they'd just let many expenses slide due to how complicated it would be to produce a receipt for every penny. Also the sum has to set out before conception so intended parents can budget which is based on an informed guesstimate. You just cannot say specifically how much will be spent or on what. A reasonable amount should be agreed with flexibility for more in the case of the unexpected or complications. It's about working as a team and a mindset that the surrogate is never out of pocket. Also what some will deem a vital expense others will not ask for. As long as all are comfortable with the amount paid then it should be no one else's business

81 Consultation Question 73:

Please provide your views below:

See q.80. The list is too extensive and individual to detail. One pregnancy will incur costs that another will not

82 Consultation Question 74:

Please provide your views below:

Additional would be things like a recuperation family break, activities for the surrogates children, holistic therapies, post birth gym membership or classes, post birth clothing. Anything linked to the pregnancy and additional things to make it a positive experience for all including the surrogates family are just as essential as loss of earnings and maternity clothes and travel costs. The mental as well as the physical health needs to be taken care of

83 Consultation Question 75:

Please provide your views below:

Yes intended parents should cover the cost of everything. What the surrogate is doing for them is priceless and even with high expenses it doesn't equate to even near to the national minimum wage for effectively working 24/7 for 10 months! A surrogate should never be out of pocket or adversely effected financially

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:

Intended parents shouldn't have to pay maternity pay or sickness pay if the surrogates it through her employer. They should pay the difference between the maternity pay and her usual wage so she doesn't have a drop in income

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

Social security benefits do not understand a surrogates expenses so they try to take it as income. It purely depends on who you speak to on the end of the phone to whether they class it as income or not. This causes surrogates to hide their expenses and have a fear of being caught out and getting in trouble which is disgraceful. The current law classes a surrogates expenses as expenses and not income but it's not clear enough and it needs to be defined properly either way

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 absolutely. Anyone who has experienced complications on pregnancy or just been through a tough pregnancy and birth will know how awful it can be! Hence why 99% of women won't be a surrogate!!

Please provide your views below:

left to the parties to negotiate.

Please provide your views below:

As long as everyone is clear and translates him and details their financial expectations for specific complications then it is up to them to decide what they are comfortable with and whether to proceed. It's too individual and personal for a regulatory body to define specific amounts as it depends on the surrogates circumstances with work and kids and other responsibilities and what she feels is appropriate

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 always cover the cost of life insurance for this purpose and it's not expensive

89 Consultation Question 81:

Please provide your views below:

Absolutely they should be able to buy gifts for the surrogate and their family. It's a huge thing the surrogate is doing for them, she is gifting them a child and a family!! If the parents want to show their appreciation why should the law stop that

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:

There should not be a payment for service. Covering costs, treating the surrogate and making sure she and her family are comfortable and stress free is vital but it shouldn't go as far as a payment for service

any sum agreed between the parties to the surrogacy; or

Please provide your views below:

If it's going to happen there should be the freedom to discuss and agree a rate that works for all

essential costs relating to the pregnancy,, additional costs relating to the pregnancy,, lost earnings,, gifts.

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Payments should always in any circumstances be made in periodic sums and never in full up front and all payments made by birth excluding birth and post birth complications which should be made before leaving hospital. It should be detailed in the agreement what happens regarding expenses in the case of miscarriage or termination and detail how much at what stage

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Yes

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Not Answered

Please provide your views below:

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Not Answered

Please provide your views below:

107 Consultation Question 99:

Not Answered

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

The surrogate's partner should get normal paternity leave like the surrogate gets normal maternity. She has just given birth, potentially by c section, she more than likely has her own kids, she needs her partner at home to help while she recovers exactly the same as with her own baby. The recovery is usual much quicker as there isn't a new born to look after but she has still gone through a massive physical trauma and she may need help and support from an emotional point of view too as hormones post birth are intense

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:

Intended parents should get the same as any other parent and should not be treated differently

111 Consultation Question 103:

Please provide your views below:

Intended parents should be able to take their maternity and paternity leave exactly the same as any other expectant parent so if they wish to leave when their surrogate is 36 weeks or whatever then they can do so the same as the surrogate can

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:

Absolutely yes, treat intended parents the same

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

All health professionals should recognise the intended parents as the parents and allow them at all appointments and scans and at the birth and post birth as though they are carrying the baby themselves

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:

domestic; or

Yes

No

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

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 very much disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child’s country of birth.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other countries.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-Y5FR-B

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-07-14 15:13:09

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:

Other

Please provide your views below:

I am fundamentally against surrogacy arrangements.

I am especially against surrogacy arrangements that lead to children being brought up by same-sex couples or single parents.

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

See above.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Not Answered

Please provide your views below:

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Not Answered

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

15 Consultation Question 8:

Yes

Please provide your views below:

100 years; or

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

18 Consultation Question 11:

Yes

Please provide your views below:

19 Consultation Question 12:

No

Please provide your views below:

I object to 3, as it suggests the law can deny the natural parent.

20 Consultation Question 13:

Not Answered

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:

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:

26 Consultation Question 19:

No

Please provide your views below:

Please provide your views below:

27 Consultation Question 20:

No

Please provide your views below:

The deliberate denial of a second parent for any child is immorally placing the child at a disadvantage.

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:

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?

Yes

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

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:

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:

Other

Please provide your views below:

Full identification of all parties.

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:

The child should have an irrevocable right to access their 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:

Of course. For the prevention of close-relative procreation.

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:

No

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:

The gestation of babies is not a business.

82 Consultation Question 74:

Please provide your views below:

None.

83 Consultation Question 75:

Please provide your views below:

None.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

No.

85 Consultation Question 77:

Please provide your views below:

No.

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

No.

Please provide your views below:

None.

Not Answered

Please provide your views below:

Outlawed completely.

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?

Not Answered

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

No

Please provide your views below:

No

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

No

Please provide your views below:

No. No allowance.

111 Consultation Question 103:

Please provide your views below:

No.

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:

Definitely not.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

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?

-

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

-

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential.

As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

- 1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

- 1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

- 1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

- 1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

- 1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

- 1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-07-14 16:08:28

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Medical practitioner or counsellor

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

This situation is prone to trafficking and needs the highest scrutiny.

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

Lay justice as at present with referral in contentious cases.

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 court should proceed at the pace it sees fit without undue pressure to force a decision.

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:

Automatic legal registration of the adoptive parents puts undue pressure on the birth mother to surrender her child.

15 Consultation Question 8:

Yes

Please provide your views below:

Another period

Please provide your views below:

300 years would seem a reasonable period for the purpose of researching family trees.

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:

Children have a right to know their biological heritage.

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 anonymous sperm should be allowed. Not living with your biological father is enough of a disadvantage to a child, without anonymous sperm. I have a client born via sperm donor who finds the problem distressing and it promotes identity and relationship confusion.

18 Consultation Question 11:

Yes

Please provide your views below:

The objection period should reflect the needs of the birth mother and baby, not court process. This period of time for the mother to make up her mind should be established in consultation with psychologists and women's groups.

19 Consultation Question 12:

No

Please provide your views below:

If the birth mother decides to keep her child the intended parents should not be able to apply to take the child from her. If one of the intended parents has provided gametes the court should decide on access arrangements.

20 Consultation Question 13:

Yes

Please provide your views below:

If the surrogate has not provided positive consent at this point it might be assumed she is exercising her right to keep her baby.

21 Consultation Question 14:

Yes

Please provide your views below:

1) The welfare of the baby should always be assessed. All babies suffer from the break of the maternal bond if they are removed from their birth mother.

22 Consultation Question 15:

No

Please provide your views below:

The surrogate's spouse should be able to adopt the child. If an intended parent provided gametes that parent could be awarded access rights by the court.

Yes

Please share your views below:

23 Consultation Question 16:

Yes

Please provide your views below:

2) surrogate should decide.

Other

Please provide your views below:

The surrogate should decide.

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:

The surrogate should decide.

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 court must decide.

26 Consultation Question 19:

No

Please provide your views below:

What is the point? That's gaslighting the baby. The intended parents are neither biological nor social parents so have no business laying claim to the child posthumously.

Please provide your views below:

2

The surrogate should decide on possible adoption.

27 Consultation Question 20:

No

Please provide your views below:

Single people should not be able to use surrogates. The child is already at a disadvantage of not having its biological mother, so at least 2 loving parents are needed, preferably an extended biological family to provide role models too.

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:

Temporary may confuse the child. Permanent access of the birth mother would be better for the child.

29 Consultation Question 22:

Please provide your views below:

B judicial

If it isn't working legal powers are required.

30 Consultation Question 23:

Please provide your views below:

Yes the court should demand information and conditions it sees fit.

31 Consultation Question 24:

Please provide your views below:

Yes the court should have additional rights.

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:

The court should decide if the intended parents are fit.

34 Consultation Question 27:

No

Please provide your views below:

At birth it's much too early for the birth mother to decide.

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 WHO recommends breastfeeding for up to a year. How can this be accommodated?

36 Consultation Question 29:

Please provide your views below:

The intended parents should have no rights until the surrogate decides such.

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:

There should be one pathway.

Please provide your views below:

All surrogacy should be regulated.

40 Consultation Question 33:

Yes

Please provide your views below:

No

Please provide your views below:

The organisation must fulfill all necessary obligations.

Yes

Please provide your views below:

41 Consultation Question 34:

representing the organisation to, and liaising with, the regulator;; ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;; providing data to the regulator and to such other person as required by law.

Please provide your views below:

They must be legally accountable but able to delegate.

Please provide your views below:

Responding to the needs of the surrogate.

Please provide your views below:

Qualified in ethics and law.

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:

It should all be regulated.

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?

Yes

Please provide your views below:

Staff must be increased and fully funded by intended parents.

Please provide your views below:

The authority should have clear dominance over organisations.

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:

Someone has to fund it and it can't be the taxpayer.

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:

A list of approved organisations should be available.

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?

No

Please provide your views below:

The child should be able to access their birth certificate at age 16. Early applications could be made if social workers become involved with the family. Loss of biological heritage is a huge unconscious trauma for a child.

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

All forms should show surrogacy.

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:

No

Please provide your views below:

Gametes should not be anonymous.

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 birth mother should always be identified if she provided a gamete.

57 Consultation Question 49:

No

Please provide your views below:

16 for all information, unless a social worker decides earlier.

Please provide your views below:

2 - if a counsellor or social worker recommends it should be younger.

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

Yes

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

Yes

60 Consultation Question 52:

Please provide your views below:

Yes

Please provide your views below:

Yes

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

No

63 Consultation Question 55:

No

Please provide your views below:

Parental consent should be required.

No

Please provide your views below:

The surrogate should decide whether to relinquish consent.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Yes

Please provide your views below:

Both parents.

Please provide your views below:

Yes. 5 years minimum.

65 Consultation Question 57:

Please provide your views below:

Relationships should qualify.

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:

Other

Please provide views below:

There should be no international surrogacy.

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

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?

No

Please provide views below:

If they're that unstable the interests of the baby come first.

70 Consultation Question 62:

Please provide your views below:

Surrogacy should ONLY be used for medical necessity.

Please provide your views below:

Full medical reports.

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

Yes all should be recorded and available to the child.

Yes

Please provide your views below:

72 Consultation Question 64:

No

Please provide your views below:

There should be an age limit of 40.

Please provide your views below:

40

No

Please provide your views below:

Minimum age of 21, preferably 25, when frontal cortex is fully developed and decision making capacity optimal.

73 Consultation Question 65:

No

Please provide your views below:

Should be at least 21, preferably 25.

No

Please provide your views below:

At least 21. Many people are not even fully grown at 18.

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:

Yes

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

Yes

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 of 4 with at least a year in between.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, and only on production of receipts.

Please provide your views below:

This is too open to abuse.

81 Consultation Question 73:

Please provide your views below:

Essential - chiropractic, massage and osteopath, enhanced nutrition, exercise and education classes, clothing, taxis and medical expenses, communications - tablet, smartphone, bedding and comfort equipment, books and magazines, supplements, entertainment, dala, therapist, breastfeeding coach. The intended parents should pay the costs to the NHS of any treatments.

82 Consultation Question 74:

Please provide your views below:

No payment apart from surrogate essentials. They must relate to her health, comfort or practical needs.

83 Consultation Question 75:

Please provide your views below:

No cost should be borne by the taxpayer or 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:

You need to decide whether surrogacy is a job or not! Currently women are given maternity benefits to have their own child. Earnings compensation would need to be audited.

85 Consultation Question 77:

Please provide your views below:

Only if double audited. As you know this area is wide open to abuse.

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:

Please provide your views below:

Many back or trauma issues persist for years so compensation would need to allow for this.

left to the parties to negotiate.

Please provide your views below:

Determined by solicitors similarly to road accidents. Insurance needed.

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:

Insurance should be compulsory.

89 Consultation Question 81:

Please provide your views below:

Modest gifts like flowers, fruit or books.

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:

Renting a uterus is reproductive slavery and no civilised society should even contemplate it. The Handmaids Tale.

Not Answered

Please provide your views below:

No payment

essential costs relating to the pregnancy,, additional costs relating to the pregnancy,, 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:

No

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:

Psychotherapy after the birth and ongoingly.

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:

No paid surrogacy! Only expenses and compensation.

95 Consultation Question 87:

Please provide your views below:

You will need to ensure access to bank accounts for auditing.

96 Consultation Question 88:

Yes

Please provide your views below:

If paid surrogacy were allowed the money should be held in the organisation's account in advance ready to pay the surrogate.

Yes

Please provide your views below:

I was very health conscious when pregnant, then again it was MY baby!

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

International surrogacy is unethical.

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:

No to international surrogacy.

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:

Other

Please provide your views below:

Why are you supporting this odious baby trafficking? Exploitation of 3rd world women.

Not Answered

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

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:

Just say NO!

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:

Birth mothers need to retain rights.

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:

Intended parents do not need ante natal classes since they're not giving birth. *Induced lactation*!? Only women who have been pregnant can breastfeed.

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 are NOT pregnant or lactating so do not need these provisions. This is getting Orwellian. What they need is specialist counselling.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

The surrogate's rights must be paramount. All other options must be explored before recommending surrogacy.

115 Consultation Question 107:

Please provide your views below:

The NHS should not pay for surrogacy.

Please provide your views below:

Long term monitoring of surrogate's and child's wellbeing.

Please provide your views below:

Midwives must be party to the ongoing assessment and monitoring of the surrogate's and baby's mental health. Any concerns with them or the intended parents should have a clear reporting pathway.

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Slavery and trafficking legislation.

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:

In this impact section you have asked many questions about how intended parents feel, but only 1 for surrogates and NONE about the children born of this process. You need to do research on these important issues. Also there's no evidence of social surveys of public opinion. I think this September is too soon for the consultation to end.

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

None

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these

cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

- 1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

- 1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

- 1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-YJ9H-9

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-07-26 14:33:26

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:

University of Exeter

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 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Not Answered

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:

Yes

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:

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?

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:

Other

Please provide your views below:

In these circumstances, it shall be open to the families of the intended parents to apply for adoption of that child should the surrogate have no objection.

Please provide your views below:

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

29 Consultation Question 22:

Please provide your views below:

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Yes

Please provide your views below:

34 Consultation Question 27:

Yes

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Yes

Please provide your views below:

36 Consultation Question 29:

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:

In such cases, counselling for both the surrogate and her partner,(if that is the case) re: physical/emotional/social/economical/medical consequences of having the first child through surrogacy (gestational or otherwise) would be a better course than denying her the right to decide 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:

The health impact of multiple pregnancies (both physical and emotional) on a woman's body should be considered by the regulating agencies and accordingly, a limit on the maximum number of surrogate pregnancies should be set.

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:

For altruistic surrogacy, it is imperative the law does not support any such activities that prompt women to become surrogates making it financially lucrative.

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:

Such compensations are a garb for commercial surrogacy. If a woman is entering into altruistic surrogacy having understood the complication that may arise ranging from pain and suffering to medical complications (as noted), then it is understood that she took an informed risk. Intending parents must pay the medical bills for the treatment of associated medical complications and for follow up care but not the compensation.

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:

Purchasing a life insurance policy for such consequence by the intending parents shall be provided but no other payment.

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:

Because that makes it commercial surrogacy.

Not Answered

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

██████████

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

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

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-YJAX-1

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-08 13:14:50

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:

[REDACTED]



3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

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:

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:

I propose 30 years

Another period

Please provide your views below:

I propose 30 years because the register will also hold this information and they should be classed as 'medical' notes by the centre treating the intended parents and the surrogate and the conditions of the HFEA Act 1990

T103 The centre must keep data necessary to ensure traceability for a minimum of thirty years (and for such longer period as may be specified in Directions) in an appropriate readable storage medium.

GDPR introduces some new rights for individuals and enhances other rights, but in general an individual's rights under GDPR are not absolute and will

only apply in certain circumstances. For example, although GDPR introduces a right for individuals to have personal data erased, that right does not apply if the processing of the individual's personal data is necessary to comply with a legal obligation. In other words, centres will not need to comply with a patient's request for erasure of their IVF treatment records given that it is a legal requirement, by virtue of General Direction 0012, that the centre retains those records for at least 30 years. Matters which raise questions about the application of GDPR and the HFE Act 1990 should be considered on a case by case basis and centres should consult the Information Commissioner's website for guidance and take their own legal advice where necessary.

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:

What about embryos created before the introduction of donor anonymity changes??

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:

This will take pressure off clinics needing to obtain Withdrawal of Consent from the Spouse or civil partner of the surrogate.

No

Please share your views below:

If we have two different pathways will this not lead to confusion?

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:

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:

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:

Surrogacy UK?

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:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

No

Please provide your views below:

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?

No

Please provide your views below:

If they remain unenforceable - why have them at all?

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 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 about causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Yes

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

Many fertility patients that discover they may need to use a surrogate have questions about moving their already created embryos abroad for use in a surrogacy agreement.

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?

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 provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

[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

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.

We invite consultees' views as to whether, in England and Wales:

1. all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

2. if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

We invite consultees' views as to whether they are of the view that, in Scotland:

3. there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
4. it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
5. further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

6. entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,

7. complied with procedural safeguards for the agreement, and
8. met eligibility requirements,
on the birth of the child the intended parents should be the legal parents of the child,
subject to the surrogate's right to object.
Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

We provisionally propose that:

9. the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
10. this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
11. the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

12. the surrogate will be the legal parent of the child;
13. if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
14. the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’ – particularly with the ‘intended parents’ acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child’s best interest being the paramount consideration, in accordance with the UN Special Rapporteur’s recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 13.

We provisionally propose that, in the new pathway:

15. the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
16. if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
17. if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

(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 of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

We provisionally propose that:

the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

We invite consultees' views as to whether:

101. any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
102. if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

We invite consultees' views as to:

103. whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
104. if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions

and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the ‘intended parents’ are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman’s health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn’t in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of ‘attractiveness’ for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people’s thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself. There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

We invite consultees’ views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the ‘intended

parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

105. when the child was born;
106. whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
107. whether the arrangement led to the making of a parental order in the UK; and
108. whether they are a:
 1. opposite-sex couple;
 2. male same-sex couple;
 3. female same-sex couple;
 4. single woman; or
 5. single man.

N/A

Paragraph 18.2

Consultation Question 110.

We invite consultees who have experience of applying for a parental order in the UK to tell us:

109. whether the surrogacy arrangement was domestic or international;
110. whether they had legal advice before the making of the parental order;
111. whether they were represented by a lawyer in court; and
112. the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

113. medical screening; and
 114. implications counselling
- (where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- 115. to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and
- 116. to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

We invite consultees to tell us of the impact of:

- 117. the current requirement of a genetic link; and
- 118. any removal of this requirement in cases of medical necessity:
 - 1. in the new pathway;
 - 2. in the parental order route for domestic surrogacy arrangements; or
 - 3. in both situations.

Paragraph 18.11

Consultation Question 114.

We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- 119. their profession; and
- 120. what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- 121. if particular proposals will increase accessibility, and why; and
- 122. if particular proposals will restrict accessibility, and why.

N/A

We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- 123. if particular proposals will increase accessibility, and why; and
- 124. if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

We ask consultees who are intended parents to tell us:

- 125. whether the surrogacy arrangement was domestic or international;
- 126. what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- 127. how they raised the funds for the surrogacy arrangement(s);
- 128. what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- 129. how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have

an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-08 20:58:09

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?

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:

Dear Sir/Madam,

I feel that once more my own situation has been overlooked. None of these reforms will help me as I have four donated embryos and would like to use a surrogate. The emphasis is still on the biological link. That's also discriminatory. People are allowed to adopt a child and they are allowed to be parents without a biological link. It's hypocritical. Why doesn't this issue feature on the proposed reforms? So disappointing in my case. It's allowed in the USA why not here ??? Current law violates my rights to a family life and my son to have a sibling.

[REDACTED]

Law Commission Consultation Paper 244

Building families through surrogacy: a new law

Mishcon de Reya

In response to the request of the Law Commission to comment on its provisional proposals as set out in the above report, we make the following comments within the context of our experience (which relates to international surrogacy only):

1. General

As the general aim of the proposals is to create an environment that will encourage intended parent(s) to use domestic surrogacy in preference to international surrogacy then surrogacy as a legitimate way of seeking assisted conception needs to be actively promoted and the Law must work proactively with those affected by it. Moreover, given that the current legislation regulates both domestic and international surrogacy through parentage, we welcome the shift in emphasis of parenthood from being tied to a contractual mode of legal parenthood to that of being attributed from birth.

2. Payments

While payments may be a contentious issue, (and there is a concern as to how to minimise harm and exploitation within any surrogacy - whether it be domestic or international), whatever the new national statutory framework to be adopted, it still needs to ensure that there is a degree of reality in the variety of payments to be made depending on each set of circumstances. The public also needs to be aware that surrogacy as a 'commercial' arrangement is not a 'road to riches' even in states such as California, USA where compensatory payments may be expected to be 'high' (particularly for those who believe surrogacy is mainly for celebrity parents and will attract corresponding celebrity fees). In our experience they fall between £25,000 and £45,000, although this is in addition to allowances such as for clothing and travel and compensation for specific medical procedures, and other costs such as medical costs which may be prohibitively high. Even the research by the Law Commission has identified that there is a bracket of payments ranging between £10,000 and £20,000 which may be surprising to those who either have misgivings about surrogacy and/or those who have concerns at the significant risk any woman undertakes in being a surrogate. It should provide full transparency and reassurance to those who maintain that an ethical arrangement can only be achieved if surrogates do not receive payment for themselves, when the reality is that such payments are often being disguised.

While there are valid arguments against the commodification of women and children, given that (i) there is an overall acceptance that surrogacy is an acceptable form of building a family, (through regulation rather than prohibition), and (ii) society and attitudes have evolved, then provided the appropriate safeguards as proposed by the Law Commission are implemented, this should address those concerns, albeit with the emphasis still favouring a less prescriptive approach and a degree of discretion within any payment formula. Payments can, in any event, be under the control of a third party alleviating any concerns as to inappropriate control and/or influence.

The response to some of the questions raised in Chapter 15 are at Annex A.

3. A Surrogate's right to Object

Throughout the report, there is reference for the need for certainty. We believe this can only be provided if the agreements are enforceable, particularly if the pre-birth safeguards being proposed

(including pre-surrogacy assessments, psychological assessments, and counselling for both the surrogate and the intended parent(s) with enhanced background checks) are implemented.

If such agreements are not against public policy then to risk a situation whereby the surrogate should retain autonomy by having the right to object post birth for the intended parent(s) to be the legal parents (and presumably to refuse to hand over the child), this will, in our view, undermine the process. Unless the parties feel reassured about the domestic surrogacy process, then those with funds will continue to seek international jurisdictions with a largely successful programme whereas those without funds may be encouraged to venture to countries with developing and/or illegal surrogacy markets and in all likelihood, fewer safeguards.

While complaints are made that surrogacy contracts can often favour the intended parent(s), the suggestion that enforcement of the surrogacy agreement is limited to only payment seems perverse when:-

- i. this will create a surrogacy system that may hold little attraction for intended parent(s) and will not promote a system that will meet one of its objectives - to encourage domestic surrogacy in preference to international surrogacy;
- ii. various medical advances have created a predominance of gestational surrogacy, so the likelihood of any surrogate having a genetic link to the child is diminishing;
- iii. if the alleged stigma is to be removed that a surrogate can be paid for her services, then what recourse will the intended parent(s) acquire should they pay for the service and yet the surrogate retains 'their' (genetic) child; and
- iv. the creation of a process with rigorous safeguards such as professional advice, assessments, counselling pre-birth should not only remove the need to make such assessments post-birth but will help discourage those who may be more vulnerable and at risk of not complying with the agreement. Indeed, in this regard, we suggest that particular emphasis needs to be focussed in relation to the agencies and ensuring they maintain a diligent approach to the screening process whether it be by licensing, regulation etc.

If paying a surrogate to provide a service, the intended parent(s) are, we say, entitled for their child to be handed over, and for the surrogate to feel reassured that the intended parent(s) have a legal obligation for the child. It is important to reflect the true risk being undertaken by the surrogate as well as the level of trust required between the surrogate and the intended parent(s) irrespective of the agreement, and the need to ensure that the agreement does nothing to undermine this to those that can be obtained overseas.

It is understood that the attraction of many overseas jurisdictions relates to the (i) ease of enforceability of surrogacy contracts; and (ii) speed in finding a suitable surrogate. If the perceived view of domestic surrogacy is that it will remain a legal system that will not provide an enforceable agreement and not encourage women to be surrogates, creating a new regulatory system will be a pointless exercise, hence the need to ensure that any new domestic system can provide similar benefits.

4. International Arrangements

While we accept the urgent need to reform the surrogacy statutory framework, and acknowledge the divergent views on the issue, given the aims of the Law Commission, we are concerned that separate “pathways” are being proposed for international surrogacy. It would be as though such arrangements could be viewed and treated in isolation whereas amendments to national law must be viewed against the backdrop of other jurisdictions if any relevant UK agency/Court is to be satisfied as to the protection of the surrogate and the child, irrespective of the domestic laws of the overseas jurisdiction.

What is clear, however, is that where many intended parent(s) undertake a significant amount of research as to a solution to their childlessness, there is often a corresponding lack of research as to the legal implications and particularly whether the surrogacy arrangements meet the current criteria pursuant to s54 of the HFEA 2008, including the consent of the surrogate (which includes a full understanding of the legal implications by the surrogate of her consent), as well as undertaking an assessment to satisfy themselves that the surrogate was not vulnerable to exploitation by relying on agencies acting as intermediaries.

Moreover, domestic mechanisms can be put in place to ensure that any surrogacy arrangement, whether domestic or international, is reviewed prior to the surrogacy arrangement being undertaken to address issues such as consent, funding, scrutiny of the contract etc. If welfare is the paramountcy driver, then the earlier these issues can be addressed with the intended parent(s) and the surrogate would be an effective means to allay the concerns that the Law Commission raises. It would also enable the intended parent(s) to consider the risks of any international surrogacy and reflect on what steps would be required to satisfy the relevant UK agency/Court, to seek out only preferred jurisdictions with appropriate safeguards and to avoid any dispute that that would prevent the relevant UK agency/Court attributing legal parenthood.

While creating a global standard is not possible, it is arguably still within the remit of the Law Commission to create a domestic system that determines not only how domestic surrogacy operates in the U.K., but should also influence intended parent(s) to seek international jurisdictions with compatible safeguards.

Annex A – Responses to Chapter 15

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.*

The parties should be able to agree between themselves the basis on which any costs are to be paid, including a mixture of costs and/or an allowance.

As raised by the Law Commission, the requirement for the production of receipts could create practical or administrative challenges which some parties may consider to be burdensome. However, this should not prevent the parties from choosing this method of payment if they so choose.

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".*

The surrogate should not be in a financially adverse position as a consequence of her decision to assist the intended parent(s) have a child. Intended parent(s) should therefore be able to pay the surrogate all of the costs relating to the pregnancy. As set out further below, we do not consider the distinction between 'essential' and 'additional' costs to be particularly helpful.

However, if there were to be a distinction between 'essential' and 'additional' costs, some examples of 'essential' costs would be the following: medical costs (including recommended vitamins and supplements), IVF expenses, counselling, legal fees and maternity clothes. This should not be a prescriptive list as what is 'essential' will differ on the specific circumstances of each surrogacy.

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.*

As above.

Some non-exhaustive examples of 'additional' costs include the following: housekeeping expenses, lost wages, child-care expenses, mileage reimbursement and travel expenses (including for a companion if the surrogate cannot travel alone).

Yet much will depend on the nature of the pregnancy, and how invasive it is and/or the risks placed on the surrogate. Hence the additional costs could include the following: fees per embryo transfer, payment for a mock cycle (e.g. if the surrogate is required by the IVF physician to undergo hormonal therapy contemplated for the actual cycle), a dropped cycle (where the cycle is cancelled through no fault of the surrogate), fees for multiple pregnancies, compensation for the loss of fallopian tube, uterus or the requirement to undergo hysterectomy or invasive procedures (e.g. caesarean section, inserting

a needle through abdominal wall to reduce number of fetuses, medically advised abortion, procedure for ectopic pregnancy etc.).

Again, such permitted costs should not be too prescriptive.

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.*

Intended parent(s) should be permitted to pay all costs, and examples of such costs are set out above.

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).

The intended parent(s) should, if agreed, be able to pay the surrogate her actual lost earnings, although any benefits received would need to be taken into account to avoid any double counting. Such costs could also be capped.

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)*

We do not consider that lost potential earnings should always be paid. However, this should not prevent the parties agreeing that an element of lost potential earnings could be paid if it applies in their particular circumstances and/or it is quantifiable.

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.*

Intended parent(s) should be able to pay compensation to the surrogate for all of the above, though we are of the view that it should be capped and/or covered by insurance.

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.

Compensation for multiple pregnancies and the requirement to pay a life assurance premium for the surrogate and the child.

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.

If the level of compensation were to be set by the regulator, this may need to be undertaken with a view to the fees that are charged in international surrogacies for the purposes of consistency.

Alternatively, the regulator could provide a bracket for any potential compensation payments.

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

Intended parent(s) should be able to pay for a life assurance premium for the surrogate.

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.*

We are not of the view that gifts are appropriate.

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.

Given that other professionals will be benefitting financially from the surrogacy, the cost of providing a surrogacy service should be paid to the surrogate by the intended parent(s) also.

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.*

The payment should be agreed between the parties on the basis of a bracket of payments provided 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*

As above.

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-09 04:55:21

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

This helps surrogacy arrangements to be regulated and hopefully protects all involved.

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:

I am not legal and thus do not know which process would be faster for intended parents and the surrogate, but would request that whichever route is faster be the route allocated. Intended parents have already been through a great deal by the time they reach surrogacy and having to wait to be legally named parent to their child makes the process harder. Also for the surrogate they likely would rather it be sorted faster in order to move on with their own lives and their own family.

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:

As above, if this means the intended parents are more likely to be legal parents from the birth, this would be a better scenario for all involved.

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

The intended parents should be the legal parents from birth.

For us, as 'intended parents' having been through a long and emotional journey before becoming parents, to finally have our long awaited child, to then have to deal with all the processes to legally be named his parents was stressful and emotional. Additionally, our friend who was a surrogate for us just wanted to get in with her life and focus on her family, rather than have to help us further with paperwork. I also objected to her husband being named the legal father of my child given he had no real link to our child.

15 Consultation Question 8:

Yes

Please provide your views below:

Hopefully this would help to protect all involved.

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:

Again, the intended parents will have been through quite enough without the worry that the surrogate decides to keep their child. The surrogate agreed to carry the child and be given reasonable expenses. It is worrying that she may then be given the opportunity to keep the child of the 'intended parents'.

19 Consultation Question 12:

No

Please provide your views below:

The surrogate should be given no legal rights to the child that she agreed to carry and give birth to. As long as the child is in no danger and would be well looked, the intended parents should be the legal parents from the outset (whether conception or birth).

20 Consultation Question 13:

Other

Please provide your views below:

I don't fully understand this proposal but as above the surrogate has agreed to carry and deliver the baby. The intended parents should be parents legally and no parental rights should be given to the surrogate.

21 Consultation Question 14:

Other

Please provide your views below:

This is complicated as the welfare of the child is of course the most important factor. However, 'normal' pregnancies do not appear to have to go through such a process.

22 Consultation Question 15:

Yes

Please provide your views below:

The surrogate's partner has nothing to do with the child, other than being a friend of the real parents (the 'intended' parents).

No

Please share your views below:

There is no link other than a circumstantial link between the child and the surrogate's partner, so the surrogate's partner should have no legal rights to the child.

23 Consultation Question 16:

Not Answered

Please provide your views below:

Whatever the outcome of the birth, the 'intended' parents should be regarded as the legal parents.

Not Answered

Please provide your views below:

Whatever the outcome of the birth, the 'intended' parents should be regarded as the legal parents.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Not Answered

Please provide your views below:

Whatever the outcome of the birth, the 'intended' parents should be regarded as 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 surrogacy Agreement should cover this before conception. The 'intended' parents should be the legal parents, the surrogate agrees to become a surrogate and should be made aware of the potential dangers of pregnancy, the 'intended' parents should help to ensure the surrogate has very good medical care through the pregnancy, the birth and if needed post-birth, and should also pay any related premiums to Ensure the surrogate has adequate life insurance that does not exclude surrogacy.

26 Consultation Question 19:

Not Answered

Please provide your views below:

The 'intended' parents should be the legal parents. The surrogacy Agreement and the 'intended' parents Wills should cover who will look after the child should both 'intended' parents die before or soon after the birth of their child.

Please provide your views below:

The 'intended' parents should be the legal parents. The surrogacy Agreement and the 'intended' parents Wills should cover who will look after the child should both 'intended' parents die before or soon after the birth of their child.

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:

The 'intended' parents should be seen as the legal parents from the outset (as in the American system).

34 Consultation Question 27:

Not Answered

Please provide your views below:

The 'intended' parents should be seen as the legal parents from the outset (as in the American system).

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:

The 'intended' parents should be seen as the legal parents from the outset.

36 Consultation Question 29:

Please provide your views below:

The 'intended' parents should be seen as the legal parents from the outset.

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:

Our friend was a surrogate for us. The clinic we used in [REDACTED] only allowed us to do the surrogacy arrangement after our friend and her husband went to a counselling session with me and my husband; they also had their own counseling session at the clinic; and my husband and I had a counseling session. We worked with NGA to draw up a surrogacy Agreement. We paid for all medical costs and offered private medical care but our surrogate preferred to use the NHS.

39 Consultation Question 32:

Please provide your views below:

All should be legalised and monitored. The welfare of the child should come first and foremost. The 'intended' parents should be the legal parents from the outset.

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:

Perhaps a team rather than one individual being responsible for all of this.

Please provide your views below:

Please provide your views below:

Legal background and compassion.

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:

Surrogacy should not be about profit making, it should be about welcoming a child into the world who will be well looked after by parents who have longed for that child, whilst ensuring all involved are treated fairly.

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:

Only regulated and legal agencies should be offering and providing this service.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Not Answered

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Not Answered

Please provide your views below:

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I understand why advertising for a surrogate or to be a surrogate is banned currently. It should all be regulated so as to protect 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?

No

Please provide your views below:

The birth certificate should have the 'intended' parents names on it from the birth register.

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:

Everyone deserves to know where they came from and how they came to be. We will always be open with our son that he was born through surrogacy. I feel strongly that my husband and my name should always have been the first parental names on our child's birth certificate but I have no issue with him knowing that he was born through surrogacy.

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:

'Intended' parents should be the parents on the birth certificate from the beginning.

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:

Birth certificate should have the 'intended' parents names from the first registration.

55 Consultation Question 47:

Yes

Please provide your views below:

Recording this is fine.

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:

This would depend on host or gestational surrogacy.

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

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:

Yes

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:

No. Should be domiciled status or citizenship.

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:

As long as one of the 'intended' parents is biologically related to the child I think the arrangement should be able to proceed.

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:

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. We understand this allows her to have completed her own family. It also means she know what she is getting into and will not too to try to keep the child.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on an allowance;

Please provide your views below:

81 Consultation Question 73:

Please provide your views below:

'Intended' parents should be responsible for all costs involving the surrogate and the pregnancy, as well as any necessary pre- and post-birth related costs.

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:

There should not be any loss of earnings as covered under employment laws.

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:

If there are costs related to the pregnancy and surrogacy arrangement these should be covered by the 'intended' parents

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:

Yes but would need to be regulated.

89 Consultation Question 81:

Please provide your views below:

This would be hard to regulate especially if the surrogate is already a friend and gifts would have been given on certain occasions anyway.

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

Commercial surrogacy becomes a tricky situation and women may only enter into surrogacy if their financial situation means this is seen as an easy way of making money. A surrogate should only enter into surrogacy if she is emotionally and physically able to do so, and not because she needs some more money.

a fixed fee set by the regulator.

Please provide your views below:

Please provide any views below:

Very difficult to regulate.

91 Consultation Question 83:

Please provide views below:

This depends on the circumstances of the miscarriage or termination and if the surrogate was negligent.

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 about causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Not Answered

Please provide your views below:

107 Consultation Question 99:

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:

The 'intended' mother should be given full maternity leave benefits, and the 'intended' father should get full paternity leave benefits. Surely these benefits exist so that parents can spend time, bond and look after their child.

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

No

Please provide your views below:

Both are parents, both should be given parental rights and benefits. Otherwise it is surely discrimination against people who have had to deal with infertility issues.

111 Consultation Question 103:

Please provide your views below:

Yes, rights should be given to intended parents, just as those lucky enough to carry their own child are given rights to attend clinic/hospital appointments.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

Yes. As an 'intended' mother I had to express at very regular intervals for several weeks before the birth of my son in order to be able to breastfeed him once he was born. While at work I would hide away in the toilets and throw any expressed milk away.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

Parental leave is a must for 'intended' parents. They are after all parents and need time to bond with their new child, look after them, figure out how to become parents, wake regularly through the night for feeds and cuddles, attend appointments, and bond with other parents with new babies.

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:

Most of the midwives we saw during appointment with my friend who was a surrogate for us were lovely. However one midwife refused to look at me and kept referring to my friend as the 'mummy'. I found that deeply upsetting. The surrogate should of course be given all medical attention as necessary, and emotional support as needed. The intended parents have already been through a great deal and are excited to become new parents and should be treated with the same respect and excitement as any expecting parents.

Please provide your views below:

Please provide your views below:

The midwife at the birth of my son was absolutely wonderful. She managed a tricky birth whilst taking immense care of my friend who was tired and in pain, as well as looking after me as I tried to be supportive to my friend who was giving birth to my child, but I was actually terrified given the tricky birth situation. I am forever grateful to that wonderful midwife ().

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:

domestic; or

Yes

Yes

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:

Although I could not have been happier to finally become a mother to my long awaited son after a long and emotional infertility journey, and will be forever grateful to my wonderful friend who was a surrogate for us, I did find the legal process very emotional at an already emotional time. Dealing with a new born and all the paperwork and processes to be named as his legal parent was difficult for me and my husband. I have never understood why my friend was written on the initial birth certificate as my son's legal mother, and although my surrogate friend's husband is also a good friend, it felt very wrong that he was named the father of mine and my husband's child. After a lot of meetings, emails with our lawyer and the contact for the parental order, we finally got the birth certificate through with mine and my husband's names on it, along with the name of our son. I filed the original birth certificate away and I never

want to have to look at it ever again. We tell our son he was born through surrogacy, he will always know the full truth, and he will know his wonderful 'auntie' who was a surrogate for us. This will help their friendship too I hope. My friend was offered further counseling but she remained adamant that she knew what she was entering into when she offered to be a surrogate for us and she only ever saw herself as a surrogate through the pregnancy and now a special auntie to my son. While I am forever grateful, I needed no reminder that I wasn't able to carry and give birth to my own son and it breaks me still that his first birth certificate does not show that I am his mother and that his actual father is his father. I am very very sure that a legal surrogacy arrangement, where all parties are fully aware of their role, and all are well looked after and protected, should result in the 'intended' parents being regarded as the parents from conception. That way any medical decisions and appointments will look after the needs and rights of child, the surrogate and the 'intended' parents, and the 'intended' parents should thus be named as the legal parents on the birth certificate.

120 Consultation Question 112:

Please provide your views below:

Paid for medical screenings for all involved, counselling, travel, legal fees, medical fees not covered by NHS, allowance, meals.

Please provide your views below:

The surrogacy agreement is important and brings up issues all parties need to consider and agree on. Perhaps his document should become a legally binding document?

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:

domestic; or

Please provide your views below:

40,000 GBP

Please provide your views below:

Savings and work work work

Please provide your views below:

50,000 GBP

Please provide your views below:

Work work

Work

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:



Response to

**Law Commissions' Joint Consultation Paper on
Building Families Through Surrogacy: A New Law**

October 2019

For more information, please contact the SurrogacyUK Board of Trustees at:
trustees@surrogacyuk.org

ABOUT SurrogacyUK

SurrogacyUK is a leading, not-for-profit organisation that supports the creation of families through altruistic surrogacy in the UK. We help surrogates to meet intended parents; we educate and advise people at all stages of their surrogacy journey; and we work with stakeholders to improve the experiences and outcomes for surrogates, intended parents and families formed through surrogacy in the UK.

SurrogacyUK and UK surrogacy are thriving. We have supported the birth of almost 250 children since our foundation in 2004. In 2019 we hope to welcome another 29 surrogate children to UK families; this is four times as many as our annual average ten years ago. Today we have almost 140 active surrogate members with an average of almost one new joiner a week.

We play a very active role in supporting and advocating on behalf of the wider UK surrogacy community:

- We run the UK's largest public social media group for surrogacy (approximately 3,200 members) which provides expertly moderated advice and support to anyone at any stage of their UK surrogacy arrangement
- We run more public surrogacy events than any other organisation in Europe, with 68 planned across the country this year. As part of this we run an annual conference attracting almost 500 attendees
- We educate the public and professionals on surrogacy matters through general and professional media and at a range of fertility-related events and organisations, including the European Society of Human Reproduction and Embryology and The Fertility Show
- We support a wide range of public policy initiatives. We were a key contributor to the Department of Health's surrogacy guidance, published in February 2018, and are an active member of the Association of Fertility Patient Organisations, representing the voice of patients to the HFEA.
- We actively campaign for legal reform, through the SurrogacyUK Working Group on Legal Reform (with academic and practitioner lawyers) and the All-Party Parliamentary Group on Surrogacy, which we helped to establish.
- We undertake our own primary research with the largest number of individuals with "lived experience" of UK surrogacy (e.g. SurrogacyUK Working Group on Surrogacy Law Reform Surveys in 2015 and 2018)
- Through our members we support the research of others; our families act as case studies for the pioneering research into families created through surrogacy undertaken by the Centre for Family Research at the University of Cambridge

ACKNOWLEDGEMENTS

This document was prepared on behalf of SurrogacyUK's Board of Trustees by its Consultation Response Team: [REDACTED]

[REDACTED]. Between us we have experience of: being a surrogate; being an intended parent; being a gamete donor; traditional surrogacy; gestational surrogacy; known gamete donation; being a parent through surrogacy; and, carrying our own children.

When preparing this response, the Consultation Response Team carefully consulted surrogates and intended parents about their views, especially where we felt their collective lived experience would be of particular importance. We would like to thank the 260 respondents to our surveys, which included 72 surrogates and 175 intended parents. Throughout our response their feedback is referred to as the **SurrogacyUK 2019 Survey**.

We are grateful for the ongoing support of the SurrogacyUK Working Group on Surrogacy Legal Reform. Their legal and bioethics knowledge has been invaluable, as has the information, analysis and recommendations of its 2015 and 2018 reports which we refer to in our response as the **SurrogacyUK Working Group Reports**.

We would also like to thank our fellow SurrogacyUK Member [REDACTED] for their individual contributions of personal and professional wisdom.

Finally, we appreciate the counsel and challenge offered by our critical friends on the SurrogacyUK Advisory Board and SurrogacyUK Ethics Committee.

FOREWORD

I am delighted to present our response to the Law Commissions' consultation on reforming surrogacy law. This is an area where SurrogacyUK has passionately campaigned for change over many years.

As Chair of SurrogacyUK, I talk to many intended parents, surrogates and children and share in their journeys. As a four-time-surrogate I have built an extensive, practical, and personal understanding of surrogacy and the emotions involved. I also collaborate and work with many surrogacy professionals, including clinics, medics, lawyers, and counsellors. Across all these stakeholders, the consensus is clear: surrogacy law is outdated and must be updated, but in a way that:

- reflects and improves the lived experience of those undertaking a surrogacy arrangement
- protects and balances the rights of all those involved, in particular children born through surrogacy
- helps improve access to surrogacy
- encourages UK surrogacy in the first instance
- and helps improve public perceptions of, and support for, this form of modern family building

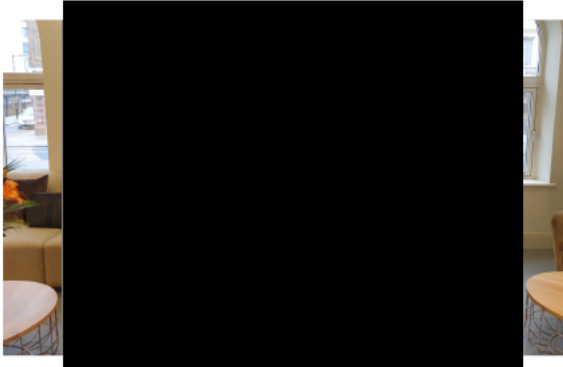
This is no small task and I am impressed by the collaborative approach adopted by the Law Commissions who have carefully listened to us, our members, as well as other stakeholders and the public who hold a range of views on this topic.

Collaboration, listening and teamwork are core values for SurrogacyUK and we have worked behind the scenes to make sure that those values are mirrored in our response to this consultation. Our response has been compiled by a working group consisting of both surrogates and intended parents. We have surveyed the broader surrogacy community, and we have debated our response with our members, our Board of Trustees, the SurrogacyUK Advisory Board and our Ethics Committee, as well as the SurrogacyUK Working Group on Legal Reform. Through these groups, we are proud to have been able to draw on a broad range of experiences, skills and backgrounds, including those with personal experience of surrogacy as well as lawyers, social workers, ethicists, clinics, and more.

It should be clear from this submission that we are very positive about the proposals put forward by the Law Commissions. Many of them reflect the recommendations of the SurrogacyUK Working Group on Legal Reform and their reports in 2015 and 2018. Overall, the proposals are a huge and bold step forwards and are successful in balancing the rights and welfare of all of those involved, especially children born through surrogacy. In particular, we welcome the new pathway that will enable intended parents to become legal parents at birth to children born through surrogacy. We believe this should go even further, especially in respect to what happens if a surrogate raises an objection to the intended parents becoming legal parents. We also welcome a regulated environment that will result in safer surrogacy, as well as the inclusion of double donation. Finally, we are pleased to see that there has been no movement towards permitting commercial, profit-making surrogacy organisations in the UK. We hope that the Law Commissions will extend this protection to the kinds

of payments that are permitted under new legislation, and resist any movement away from an expenses-only model. Surrogacy should be about making families, not money.

I am confident about the future of surrogacy in the UK. I am even more confident that the proposals in this submission will help secure a constructive framework for safe and fair surrogacy for families and generations to come.



 *second from right, pictured with the SurrogacyUK Board of Trustees*

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1. INTRODUCTION

SurrogacyUK is delighted that the Law Commission of England and Wales, and the Law Commission of Scotland are jointly reviewing the UK's outdated surrogacy laws. Whilst the Government now recognises the important, positive role that surrogacy plays in creating families for people who can't otherwise have their own children, we share the widespread concern that the current legal framework supporting surrogacy is not fit for purpose and have long been an active voice for reform.

We appreciate the broad scope of the Law Commissions' analysis and their ambition to cover all aspects and implications of surrogacy, in both domestic and international arrangements. We support the goal of encouraging more intended parents to have children through domestic arrangements and feel that the consultation paper identifies most issues around this, and that many sensible reforms are proposed. We hope it is clear in our response where SurrogacyUK agrees with the Law Commissions and where we think there are gaps or better remedies.

Our response is focused on proposals and questions that relate to domestic (UK) surrogacy since this is the geographical scope of our activities. Occasionally we refer to specific aspects of international surrogacy where we know they have an impact on what happens here in the UK or where we think we can learn from experience and practice in other jurisdictions.

We are impressed by just how comprehensive the Law Commissions' paper is and the level of detail in both the proposals and the questions posed in the consultation. Our response is also necessarily detailed and set in the context of the current UK surrogacy landscape. However, we think it is of great importance that any proposed primary legislation establishes a legal framework that is flexible enough to handle the societal, technical and regulatory changes and challenges of future generations.

The abbreviations and definitions we use in our response are the same as those used by the Law Commissions in their consultation paper with the exception of the following:

Term	Law Commissions Definition	SurrogacyUK Definition
Surrogacy (also applies to Surrogate)	The practice of a woman agreeing to become pregnant, and deliver a baby with the intention of handing him or her over shortly after birth to the intended parents who will raise the child.	<p>The practice of a woman agreeing to become pregnant and deliver a baby with the intention of the child being raised by intended parents.</p> <p>[We think the statement around what happens at birth is overly restrictive and indeed normally the intended parents care from the baby from birth]</p>
Intended parents	The persons who have commissioned the surrogacy arrangement and who intend to become the legal parents of a child born through surrogacy.	<p>The persons who intend to become the legal parents of a child born through surrogacy.</p> <p>[We do not think it is correct to describe the intended parents as <i>commissioning</i> the surrogacy arrangement, but instead it is initiated collectively by the surrogate and the intended parents]</p> <p>For simplicity, we don't refer to the gender of the intended parents, who can be either women or men, and we use the plural throughout our response to mean both solo and two intended parents.</p>
Domestic surrogacy arrangement	A surrogacy arrangement where the surrogate and intended parents are both based in the UK and where all elements of the process, including pre-conception screening (assisted) conception, pregnancy and birth take place in the UK.	<p>Our definition is set out in Section 3.1.</p> <p>[We think the Law Commissions' definition should be broadened to reflect the trans-national reality of some domestic surrogacy arrangements. We think such arrangements should also benefit from the proposals that relate to domestic surrogacy arrangements only]</p>

Our response consists of:

A vision for domestic surrogacy

SurrogacyUK's hope for how UK-based, surrogacy will be in the future.

A practical proposal for domestic surrogacy

A reformed framework that would deliver SurrogacyUK's vision, which includes many of the Law Commissions' proposals.

Our position on key issues raised in the consultation

SurrogacyUK's detailed analysis and conclusions on what we feel are the Law Commissions' most significant proposals.

Our responses to the consultation questions

SurrogacyUK's response to the specific questions asked by the Law Commissions in their consultation paper.

Appendices

These include data commissioned by SurrogacyUK to support our analysis of the proposals.

2. A VISION FOR DOMESTIC SURROGACY

This section sets out SurrogacyUK's hope for how UK-based surrogacy should be in the future.

People should know - before they have a need or desire for it - that altruistic surrogacy is an established, accessible and safe way to create a family in the UK.

When deciding whether surrogacy is right for them, it should be easy for a woman thinking of becoming a surrogate, and intended parents to understand how domestic surrogacy arrangements work from start to finish.

There are many ways that surrogates and intended parents meet each other in the UK. Normally this is through social groups, with the help of organisations or from within existing friendships and families. Any approach that fosters relationships, and respects and protects the autonomy of the people involved should be encouraged.

However they meet, there should be a simple process for these parties to follow if they wish to transform their shared parenthood intentions into legal certainty. It should encourage them to build their relationship, identify any risks in their proposed arrangement before a commitment is made, and resolve issues if things don't work as planned.

Surrogates, intended parents and society should be assured that this process is managed and supervised by trusted institutions and organisations that provide support along the way and intervene if there are any welfare or legal concerns.

Surrogates and intended parents should feel secure in their roles and relationships with each other and any children they produce, throughout their surrogacy arrangement and beyond. They should feel pride in what they have achieved.

Children born through surrogacy should be content about their origins and should be able to access official information about this at an appropriate age.

Finally, we hope society recognises altruistic surrogacy as a benefit and provides a supportive environment for surrogates, intended parents and the families they create.

SurrogacyUK believes that altruistic surrogacy will flourish as a positive way to create a family in this country if this vision is delivered by a reformed legal framework.

3. A PRACTICAL PROPOSAL FOR DOMESTIC SURROGACY

This section sets out a reformed framework that delivers SurrogacyUK's vision, taking an holistic view of those Law Commissions' proposals that we support .

3.1 Definition of Domestic Surrogacy Arrangements

The definition of what constitutes a domestic surrogacy arrangement should include:

- the surrogate child is normally born in the UK
- the surrogate is normally domiciled in the UK
- at least one of the intended parents is domiciled or habitually resident in the UK
- the surrogacy organisation - if one is involved in the arrangement - is a regulated, UK-based entity
- the fertility treatment - if required - takes place at a clinic in the UK or another country which is recognised as having equivalent regulatory standards and laws as the UK

3.2 Legal Parenthood in Domestic Surrogacy Arrangements

Recognising the special circumstances of surrogacy, a surrogate should have the right not to be the mother of a child she carries for intended parents. This means she should be neither a legal parent nor have any parental responsibility for the child when it is born.

Acknowledging the importance of shared intent between the surrogate and intended parents in surrogacy, the law should recognise that the intended parents will be the legal parents of the child the surrogate is carrying for them when it is born.

The surrogate should have the right to object to the intended parents becoming the legal parents of the child she carries, and, if she does so within a defined period of time, the legal consequences of this objection should be determined by a court.

A surrogate should have full bodily autonomy during pregnancy, though it should be usual practice - with her consent - for the intended parents to be recognised during this time as the future parents and to be involved in decision-making that affects the unborn child.

A child's genetic and gestational origins and legal parents should be recorded in a National Register of Surrogacy Arrangements, access to which should be governed by similar principles to donor conception data.

3.3 A New Pathway for Domestic Surrogacy

A New Pathway should exist to enable surrogates and intended parents to give their parenthood intentions legal standing and certainty in domestic surrogacy arrangements.

Eligibility

The following types of domestic surrogacy arrangements should be eligible for the New Pathway, irrespective of how the surrogate and intended parents meet:

- Traditional surrogacy
- Gestational surrogacy
- Surrogacy using gametes or embryos from known donors

Mandatory Counselling and Screening

Mandatory counselling and screening requirements should be met before legal parenthood consents can be given. These requirements should be supervised by a Regulated Surrogacy Organisation.

Mandatory screening should include:

- eligibility checks on all parties
- suitability-for-surrogacy assessments of all parties
- welfare-of-child assessment of the intended parents

Statutory Legal Parenthood Consent

At least four weeks before conception, informed consent should be given freely by all parties to the legal parenthood intentions of the surrogacy arrangement. This should be recorded in official forms witnessed by a representative of a Regulated Surrogacy Organisation.

Before conception it should be possible for any party to withdraw their consent to the legal parenthood intentions.

From conception to a point to be determined in law, a surrogate should be able to seek a change to the legal parenthood intentions of the surrogacy arrangement, which should be determined by a court. In such situations, the intended parents should be the legal parents of the child once it is born until a decision is reached by the court, though the surrogate should be able to apply for parental responsibility during this period.

The intended parents should not be able to seek a change to the legal parenthood intentions of the surrogacy arrangement from conception onwards.

Statutory Payment Consent

All parties should freely give their informed consent to cost reimbursements the intended parents intend to make to the surrogate. Consents to these payment requirements should be recorded at the same time as the legal parenthood consents in official forms witnessed by a representative of a Regulated Surrogacy Organisation.

It should be possible to amend the payment requirements at any time with the consent of all parties.

Surrogacy Plan (Surrogacy Agreement)

The creation of a Surrogacy Plan that sets out the further intentions of the surrogacy arrangement should be prepared, but the provisions within it should not be enforceable. This should be a written document that is witnessed by a representative of a Regulated Surrogacy Organisation.

Independent Legal Advice

Independent legal advice should only be required where a legal risk has been identified or there is a concern regarding the ability to provide freely informed consent to the statutory requirements.

Domestic Surrogacy Arrangements outside the New Pathway

If a domestic surrogacy arrangement has not followed the New Pathway, then the parenthood intentions should not have legal standing prior to the birth of the child. In such cases, a surrogate should be the sole legal parent of a child until a Parental Order is obtained to transfer legal parenthood to the intended parents. If the intended parents are caring for their child when the application is made, then it should be usual practice for the court to give them parental responsibility until such time as the application is determined.

3.4 Payments in Domestic Surrogacy Arrangements

Intended parents should reimburse all actual costs incurred by a surrogate, who should make neither a loss nor a profit from a surrogacy arrangement. There should be clear rules around the types of costs which can and cannot be reimbursed. All parties should be accountable for their compliance with these rules and for accurately recording associated payments in official forms.

Regulated Surrogacy Organisations should be responsible for monitoring such compliance and associated statutory record keeping in the New Pathway.

Payments recorded in official forms in the New Pathway should be enforceable by both parties and should not be counted as income for the purposes of tax, national insurance or benefits calculations.

Payments made beyond statutory declarations or in arrangements outside the New Pathway should not be enforceable by either party, nor should they be exempt from tax, national insurance or benefit calculations. Courts should have the power to recover any payments that do not abide by the rules, but this should not impact on the determination of legal parenthood.

The payment rules should support the development of surrogacy-specific funding, insurance and financial protection products.

3.5 Regulation of Domestic Surrogacy Arrangements

Regulated Activities

The following activities in a domestic surrogacy arrangement should be provided on a not-for-profit basis only by a Regulated Surrogacy Organisation that is supervised by a surrogacy regulator:

- Screening of parties and/or compiling data for the purposes of a surrogacy arrangement
- Facilitating the formation of a surrogacy arrangement and any associated agreements between parties
- Witnessing that informed consent is freely given by all parties to statutory legal parenthood and payment requirements (New Pathway only)
- Supporting or managing any surrogacy-related activities on behalf of one or more parties to a surrogacy arrangement
- Statutory record keeping and registrations (New Pathway only)

Regulated Surrogacy Organisations

Regulated Surrogacy Organisations should be UK-based not-for-profit entities. Such entities should not be controlled or influenced by other entities or individuals that could profit from the activities they perform.

Regulated Surrogacy Organisations should have policies, practices and contractual arrangements that respect the autonomy of any party to a surrogacy arrangement.

Regulator

Regulated Surrogacy Organisations should be licenced and supervised by a surrogacy regulator which sets duties and standards, and monitors compliance. Organisations that are not compliant with their licence-to-operate should face regulatory penalties, including withdrawal of their licence.

Unlawful surrogacy-related activities by individuals and organisations should be a criminal offence. This should include false representation as a Regulated Surrogacy Organisation.

3.6 Other Considerations in Domestic Surrogacy Arrangements

Employment law should offer similar rights to those involved in a surrogacy pregnancy as any other pregnancy, with adjustments made to recognise the specific needs of a surrogacy pregnancy.

Education and training should raise awareness of how the public can access surrogacy and how professionals should support it.

4. OUR POSITION ON KEY ISSUES RAISED IN THE CONSULTATION

This section sets out SurrogacyUK's position regarding the Law Commissions' proposals that, in our view, have the most significant consequences for domestic surrogacy arrangements.

As well as evaluating whether the Law Commissions' proposals support our vision for domestic surrogacy arrangements, we applied the principles that a future legal framework should:

- Take as its starting point the real-life experiences of surrogates, intended parents and their families; we think their experience, wisdom and the associated empirical evidence on what works is more powerful than mere opinion and belief
- Respect and protect the interests of children born through surrogacy, and respect and protect the autonomy of surrogates and intended parents.
- Encourage relationship-based surrogacy, not transactional surrogacy or the commodification of surrogates or intended parents
- Endeavour to treat those parties involved in surrogacy in the same way as it treats families created by other means, including 'naturally'
- Work in the best interests of all surrogacy arrangements
- Ensure consistency with other public policy positions around donation, assisted reproduction and the legal relationships between individuals
- Notwithstanding this, recognise what is unique to surrogacy and requires its own approach
- Improve how surrogacy is perceived by the general public and help dispel any misunderstandings surrounding surrogacy arrangements
- Increase the attractiveness and accessibility of domestic surrogacy relative to international destinations

We have grouped our positions in the following sections:

- 4.1 Eligibility Requirements for Domestic Surrogacy Arrangements
- 4.2 Legal Parenthood in Domestic Surrogacy Arrangements
- 4.3 Payments in Domestic Surrogacy Arrangements
- 4.4 Regulation of Domestic Surrogacy Arrangements
- 4.5 Other Thoughts on The New Pathway

4.1 Eligibility Requirements for Domestic Surrogacy Arrangements

This section sets out our position on key eligibility requirements for domestic surrogacy arrangements, which we think should be the same in both the New Pathway and the Parental Order route, except where we state otherwise. In forming our position on eligibility, we have been very much guided by the principles that apply to other forms of assisted reproduction.

SurrogacyUK's Position:

- Double donation should be allowed (Section 4.11).
- There should not be a statutory requirement of medical necessity for surrogacy or double donation, but we do think that surrogacy organisations should be allowed to apply this test if they want to (Sections 5.56 and 5.59).
- Surrogates and intended parents should be over 18 years old when they consent to the surrogacy arrangement (Sections 5.61 and 5.62).
- Restrictions should be applied to stop the UK becoming a location for international surrogacy (Section 4.12), whilst recognising that some domestic surrogacy arrangement might have an international dimension (Section 4.13)

4.11 SurrogacyUK supports 'double donation' in surrogacy arrangements.

SurrogacyUK supports 'double donation' in surrogacy arrangements

We support a change in the law to recognise surrogacy arrangements where fully donated gametes/embryos from known donors are used, i.e. the intended parents are not genetically related to the child. We think that the current law unreasonably discriminates against people who are unable to carry their own child since double donation is lawful in other forms of assisted reproduction.

Some commentators argue that double donation should be treated as adoption because the child has no genetic link to the intended parents. We disagree because the pre-conception intent of the surrogate to carry the child for the intended parents, and of the identity of that child, differentiates surrogacy from adoption.

In the case of traditional surrogacy arrangements using donated sperm (and the surrogate's egg), the sperm donor should be screened in accordance with HFEA requirements and conception should occur under the supervision of a clinic (the latter is to maximise the certainty at the point of conception that the donor is the genetic father of any child born of the arrangement).

As in other forms of assisted reproduction, we should strongly discourage the use of anonymously donated sperm but this cannot be controlled outside the New Pathway. In such cases, before making a Parental Order, we think the court should be satisfied that the parties to the surrogacy arrangement had agreed their surrogacy intent prior to conception. The law should avoid the possibility of women with unwanted pregnancies seeking intended parents for surrogacy arrangements and

vice versa, which is something we have, very occasionally, experienced requests to facilitate.

4.12 SurrogacyUK supports eligibility restrictions to stop the UK becoming a location for international surrogacy arrangements.

SurrogacyUK supports eligibility restrictions to stop the UK becoming a location for international surrogacy arrangements

We think that it is reasonable to expect that it is in the best interests of all parties and wider society if a surrogacy arrangement normally occurs in the country where the surrogate and intended parents both live, because they may have a better chance of establishing a relationship, they may have a shared understanding of culture and practices, and the child would be born in the country where it will reside. This is why we support the goal of encouraging more intended parents to have children through domestic arrangements. We think, however, that steps to make the UK more attractive to our own residents will also appeal to people from outside the UK, something we should avoid. We think that the following measures should be taken to stop the UK becoming a location for international surrogacy arrangements:

- Surrogates should *normally* be domiciled in the UK to reduce the risk of overseas women seeking domestic surrogacy arrangements, either as a way to live in the UK or for financial gain, on a voluntary or forced basis. We think there is a reasonable risk of this occurring because we already have regular enquires from women in low income countries wishing to become UK-based surrogates. We suggest this should *normally* - but not always - be a requirement in order to allow reasonable exceptions, for example, a close friend or family member who lives overseas offering to act as a surrogate
- Intended parents should be domiciled or habitually resident in the UK to reduce the risk of overseas intended parents arriving with the intention of leaving again when the child is born; consideration should be given to how an habitual residence test should be applied to meet this requirement
- Surrogate children should *normally* - but not always - be born in the UK to allow for reasonable exceptions; for example: a surrogate is UK domiciled, but lives overseas (see above); a surrogate wishes to give birth overseas for personal/medical reasons (e.g. she works abroad); or, a surrogate unexpectedly gives birth overseas.

4.13 SurrogacyUK supports some aspects of domestic surrogacy arrangements taking place overseas.

SurrogacyUK supports some aspects of domestic surrogacy arrangements taking place overseas

It is not uncommon in pregnancies achieved through artificial conception for some or all of the clinical treatment to take place abroad. Indeed, intended parents may have

had such treatments to create and store embryos when they were trying themselves to conceive through IVF, before turning to surrogacy. We think that as long as the treatment takes place in an overseas clinic that meets HFEA requirements, in a country that has equivalent laws and regulations for surrogacy, then the arrangement should be able to qualify as a domestic surrogacy arrangement.

4.2 Legal Parenthood in Domestic Surrogacy Arrangements

This section sets out our position on legal parenthood in domestic surrogacy arrangements. In forming our position, we have considered with great care the special circumstances of identity and intent in surrogacy and we have given significant weight to what people with real life experience say this should mean.

SurrogacyUK's Position:

- A woman should have the right not to be recognised as the legal mother of a child she carries for intended parents (section 4.21), nor to have parental responsibility at birth (Section 4.22)
- Intended parents should be recognised as the legal parents at birth (Section 4.23)
- A surrogate should have the right to object to the intended parents being the legal parents, but the intended parent should remain the legal parents unless a court determines otherwise (Section 4.24)
- The duration of the right to object requires further consultation and evaluation (Section 4.24)

4.21 SurrogacyUK supports a surrogate's right not to be recognised as the mother of the child she is carrying.

SurrogacyUK supports a surrogate's right not to be recognised as the mother of the child she is carrying

In our experience, surrogates do not see themselves as the mother of the child they carry for intended parents. They overwhelmingly support a change in the law so that surrogates are not recognised as the mother of the child at birth. This is consistently demonstrated by surrogates, most recently in the SurrogacyUK 2019 Report in which 95% of surrogates reported they want the intended parents to be the legal parents from birth¹.

We therefore support the Law Commissions' proposals for a surrogate not to be recognised as the legal mother at birth if the surrogacy arrangement follows the New Pathway.

4.22 SurrogacyUK does not support a surrogate having parental responsibility for the child for a period of time after birth.

SurrogacyUK does not support a surrogate having parental responsibility for the child for a period of time after birth

¹ Appendix 1, Chart 1

In our view the proposal for a surrogate to have parental responsibility for a period of time after the birth is not consistent with the wish of surrogates not to have a parental role. This view is supported by most surrogates who responded to the SurrogacyUK 2019 Survey in which 72% said they did not want to have any parental responsibility after birth.²

The consultation paper proposes that it would be helpful for a surrogate to have parental responsibility for the period from the birth of the child she carries until her right to object expires. One of the reasons given is that the surrogate will always be present at the birth and the intended parents might not. For example, decisions might need to be made regarding the child's neonatal care in the absence of the intended parents. We do not agree; surrogates do not see themselves as a parent of the child and it would not be fair or appropriate for them to make such decisions. Instead the hospital should first attempt to contact the intended parents and then do as they would do in other situations when no one with parental responsibility is available.

4.23 SurrogacyUK supports the recognition of intended parents as the legal parents of their child at birth.

SurrogacyUK supports the recognition of intended parents as the legal parents of their child at birth

The consultation paper proposes that, in the new pathway, intended parents can be recognised as legal parents from birth. This proposal has received consistent and overwhelming support³, most recently in our SurrogacyUK 2019 Survey, in which 97% of responders agreed⁴. We therefore support this proposal.

4.24 SurrogacyUK supports a surrogate's right to object to the intended parents being the legal parents of the child she carries, but the intended parents should remain the legal parents unless a court determines otherwise.

SurrogacyUK supports a surrogate's right to object to the intended parents being the legal parents of the child she carries, but the intended parents should remain the legal parents unless a court determines otherwise

The Law Commissions' proposal that a surrogate should have a right to object to the intended parents becoming the legal parents at birth has stimulated much debate within our organisation, across our membership and the wider surrogacy community.

² Appendix 1, Chart 4

³ SurrogacyUK Working Group on Surrogacy Law Reform, *Further evidence for reform* (2018) ,p78

⁴ Appendix 1, Chart 1

We asked our SurrogacyUK 2019 Survey respondents if they thought surrogates should have the right to object⁵. 58% of surrogate and 60% of intended parent disagreed that a surrogate should have a right to object. There was a significant minority of respondents, however, who agreed with the Law Commissions' proposal that the surrogate should have a right to object (30% of surrogates and 31% of intended parents).

Whilst we note that most surrogates who responded do not want a right to object, we think that surrogates should not have their autonomy to exercise this right removed from them. If a surrogate exercises her right to object, however, we do not think she should automatically become the mother of the child, but instead the intended parents should remain the legal parents of the child from birth unless a court determines otherwise. We note that, even in the rare circumstance that a surrogate objects to the intended parents becoming legal parents, it is not always the case that a surrogate wants to become a legal parent herself. We feel strongly that assumptions about a surrogate's intentions should not be embedded in legislation. Furthermore, we believe the Law Commissions' proposal automatically to grant legal parenthood to the surrogate where she objects to the intended parents' legal parenthood may discourage a surrogate from using her right to object for reasons other than wanting to become the mother. We think that having judicial oversight would be the most appropriate way to consider the welfare of the parties involved and allow the court to decide what is in the best interests of the child.

We asked our SurrogacyUK 2019 Survey responders when the right to object should expire⁶: 44% respondents thought at or before birth and 34% thought a fixed period after birth. A number of people are concerned that if the time period ends just a week before the deadline for intended parents to register the birth (i.e the current proposal) then this wouldn't leave the intended parents enough time to complete the registration process. We assume that the timing of the birth registration will be decoupled from the right to object period if our proposal is accepted for intended parents to retain legal parenthood unless a court decides otherwise. As an organisation we couldn't reach a firm conclusion on the time period and feel this requires further consultation and analysis once the Law Commission confirms its proposal on which party should have legal parenthood during this time.

Finally, we think it's important to highlight that the Law Commissions' current proposal to allow the surrogate automatically to become the mother of the child if she exercises her right to object fails to remove the very uncertainty around legal parenthood that they have acknowledged is a problem with the current law. This lack of legal certainty has been cited as one of the main reasons intended parents state that they seek international surrogacy arrangements⁷. Similarly, we believe this is likely to be a significant deterrent to women becoming surrogates in the UK.

⁵ Appendix 1, Chart 2

⁶ Appendix 1, Chart 3

⁷ Vasanti Jadva, Helen Prosser & Natalie Gamble (2018): Cross-border and domestic surrogacy in the UK context: an exploration of practical and legal decision-making, Human Fertility, DOI: 10.1080/14647273.2018.1540801

4.3 Payments in Domestic Surrogacy Arrangements

This section sets out our position on payments for domestic surrogacy arrangements, which we think should only be to reimburse a surrogate's actual costs. We feel surrogacy should be seen as a benefit to society provided by private individuals and so reimbursed costs should be exempt from tax, national insurance or means-tested benefits. Our position on payments represents what most surrogates and intended parents in the UK consistently tell us they want: profit-free altruistic surrogacy.

SurrogacyUK's Position:

- The legal framework should continue to support the UK's flourishing altruistic surrogacy model (Section 4.31)
- Surrogates should not profit from surrogacy and this should be prohibited in law (Section 4.31)
- Surrogates should be able to recover their actual costs associated with a surrogacy arrangement (Section 4.32)
- There should be simple rules and guidance for surrogates, intended parents and surrogacy organisations to use (Section 4.32), and associated compliance checks, (Section 4.33) to ensure that the reimbursement model operates as intended
- Surrogacy should be seen as a benefit to society provided by private individuals and reimbursed costs should be exempt from tax, national insurance or means-tested benefits (Section 4.34).

4.31 SurrogacyUK does not support for-profit payments to surrogates.

SurrogacyUK does not support for-profit payments to surrogates

SurrogacyUK thinks that the current law, regardless of the deficiencies we discuss elsewhere, has played an important, positive role in establishing a flourishing altruistic surrogacy model in the UK. In this country we have a respectful, reciprocal and relationship-based culture and practice founded on the altruistic principles of the existing law. We also have a model that is relatively financially accessible compared with other countries.

We agree with the Law Commissions' view that there are many contributing factors to an altruistic model and we share the Law Commissions' observation that the main features are: the presence of not-for-profit surrogacy organisations; the absence of enforceable private contracts in surrogacy arrangements; and that surrogates should not profit from surrogacy.

As we state elsewhere, we are delighted that the Law Commissions propose to retain the first two features of an altruistic model and we think it is also of utmost

importance that the principle that a surrogate should not profit from surrogacy should also remain in law.

How we define not-for-profit reimbursements and for-profit payments

We welcome the Law Commissions' initiative to ensure we all have a common understanding of what different types of payments mean and we respond to the specific questions asked about this in Sections 5.70-80. We also queried surrogates and intended parents what they thought of the payment types and their responses can be found later in this section when we review their attitudes towards payments. We took their views into account in developing the SurrogacyUK position on what constitutes not-for-profit reimbursements and for-profit payments, set out below:

- We consider any payment made by intended parents to reimburse a surrogate for actual costs related to a surrogacy arrangement to be a not-for-profit reimbursement.
- We think any payment made by intended parents to a surrogate to pay her for the service of being a surrogate, which leaves her with a sum of money after her actual costs have been reimbursed, to be a for-profit payment.
- We consider that compensation payments, either triggered by a medical treatment, a medical complication or the general pain and inconvenience of the surrogacy arrangement, that are paid in addition to the reimbursement of actual costs, are a for-profit payment.
- We think, however, that the fixed "lump sum" "compensation" payments that are encouraged by some individuals and other organisations are not actually intended to compensate for an apparent harm, but instead reimburse costs, with a small profit on top. We note from the Law Commission's own analysis⁸ that fixed payments often fall within a similar range to those calculated on a strict reimbursement basis by individuals and organisations like ourselves. It would seem to us, therefore, that the current law and practice has been effective in setting a cap on for-profit payments under the current system. We explain in Section 4.32, though, why we think fixed and capped payments like this are an unsatisfactory way of reimbursing costs.

Why we think for-profit payment is a bad idea and shouldn't be allowed in law

SurrogacyUK knows, from supporting almost 250 births through surrogacy, that there are significant ethical, emotional and physical health issues and risks to consider when a woman carries a child for someone else and that it is important that people make sensible decisions around this.

All of us know that money can have a significant influence on a person's behaviour. As a result, we don't think that financial reward should be a material factor in a woman's decision to become a surrogate, to carry a pregnancy, to accept or refuse medical treatment, and to decide whether or not to be the mother of a child she carries. The decisions a surrogate makes around surrogacy have an impact not just on her, they also affect any child she might carry, its intended parents, and her own family and dependents. The converse is also true, intended parents who make a

⁸The Law Commissions, *Building families through surrogacy: a new law* (2019), p328

payment to someone to become their surrogate may have an impact on their behaviour towards and expectations of her. A financial transaction diminishes the relational aspect of surrogacy.

We do not think for-profit surrogacy should be a matter of individual choice since a profit motive could induce someone into being a surrogate who might not otherwise choose to be or might trap someone in a surrogate pregnancy who becomes dependent upon it for income. This could have unwelcome outcomes for all the individuals involved. We are aware of anecdotal evidence that surrogates might already profit from surrogacy in the UK. If this is the case then we think the amounts being paid are very modest, otherwise they would be noticeable in data (perhaps they are informally ‘capped’ by the altruistic intent of the current law and common practice). These small amounts of money made today by a minority should not be used to justify the removal of restrictions on profit-making.

If surrogacy took on the characteristics of a paid occupation then we believe this would introduce a more transactional, commodified and objectified culture and practice in the UK, which we do not think is in the interests of the individuals involved or the families they create. It would raise many questions about the relationship between the surrogate (the ‘service provider’), the intended parents (the ‘clients’), and the child (the ‘output’ of this commercial relationship). How would such a relationship be governed? We cannot see how a for-profit model could operate if the law doesn’t allow enforceable contracts for the service the surrogate is delivering. We think such contracts would be an unacceptable intrusion into a woman’s autonomy. Such a model would have issues and risks quite different to altruistic surrogacy and which would most likely require a different form of regulatory oversight that isn’t covered in this paper.

Why we don’t think for-profit payment would increase the number of UK surrogates

We are sceptical of the argument that allowing surrogates to be paid would lead to a significant increase in the number of surrogates in the UK, since surrogates tell us they don’t want to be paid. Some women also tell us that they would stop being surrogates if a for-profit model were introduced because they would not want people to assume that they were doing it for reward.

Most recently, in our SurrogacyUK 2019 Survey, we asked surrogates to indicate whether or not they were in favour of each payment type listed in the Law Commissions’ consultation document⁹. The table below indicates very strong support for reimbursement of costs (green) and low support for explicit payments (red); just 6.7% of surrogates said they think it’s acceptable to pay a surrogate for her services.

⁹ Appendix 1, Charts 10.1-13

Payment Type	Surrogate	
	Yes	No
Essential costs of pregnancy	100.0%	0.0%
Additional costs of pregnancy	100.0%	0.0%
Surrogacy-specific costs of pregnancy	100.0%	0.0%
Loss of earnings actually incurred	100.0%	0.0%
Loss of potential earnings	84.4%	15.6%
Other lost potential earnings	40.0%	60.0%
Loss of welfare entitlement	82.2%	17.8%
A modest gift, or gifts	84.4%	8.9%
A payment for the pain and inconvenience of being a surrogate	26.7%	68.9%
Payment (on top of expenses) for her service of being a surrogate	6.7%	57.8%

SurrogacyUK's altruistic ethos and expenses-only approach is very popular with new surrogates. We have over 140 active surrogates with an average of almost one new joiner each week. We think we have attracted far more surrogates in recent years than other UK organisations that are supportive of for-profit payments, but we cannot verify this since we don't think they publish statistics.

We also think it is not a compelling argument to point to the commercial models in other high-income countries as an indication of what would happen here. As the Law Commissions note, some commentators suggest that the relatively high number of surrogacy arrangements in US states where commercial surrogacy is allowed is indicative of what could be achieved here. However we observe the relatively high number of surrogacy arrangements in Canada compared to the UK and that surrogacy operates on an altruistic basis in both countries. We suggest that other factors that are common across North America, such as the certainty around legal parenthood, the simplicity of process, the quality of regulation/institutions, and social attitudes, play a more important role in encouraging surrogacy. As we write elsewhere, we are delighted that the Law Commissions are also considering these other factors in this consultation.

Why we don't think for-profit payment would change the number of UK intended parents seeking domestic rather than international surrogacy arrangements

Most UK intended parents tell us that they don't want to pay a surrogate to carry their child. Most recently, in our SurrogacyUK 2019 Survey, we asked intended parents to indicate whether or not they were in favour of each payment type listed in the Law Commissions' consultation document¹⁰. The results were similar to the surrogate responses and the table below indicates very strong support for reimbursement of costs (green) and very low support for explicit payments (red).

¹⁰ Appendix 1, Charts 10.1-13

Payment Type	Intended Parent	
	Yes	No
Essential costs of pregnancy	99.2%	0.8%
Additional costs of pregnancy	97.7%	2.3%
Surrogacy-specific costs of pregnancy	90.0%	10.0%
Loss of earnings actually incurred	96.9%	3.1%
Loss of potential earnings	56.9%	43.1%
Other lost potential earnings	13.1%	86.9%
Loss of welfare entitlement	66.9%	33.1%
A modest gift, or gifts	71.5%	11.5%
A payment for the pain and inconvenience of being a surrogate	41.5%	40.8%
Payment (on top of expenses) for her service of being a surrogate	17.7%	56.9%

We note stronger support for compensating payments from intended parents than we do surrogates, but we do wonder if this is because the Law Commissions gives insurance as an example payment in this category. Many intended parents cover the cost of insurance, which we believe to be a reimbursement, not compensation, since it covers the actual cost of insurance premiums for policies to replace lost income if a surrogate cannot work or dies as a result of the pregnancy.

We support the view that UK intended parents who have overseas surrogacy arrangements do so primarily to increase their chances of meeting a surrogate or where there is certainty around having a baby and (so they think) becoming its legal parents, rather than a desire to pay their surrogate¹¹.

Why we think for-profit payment would reduce access to domestic surrogacy arrangement for many UK intended parents

Whilst we observe that intended parents don't want to pay for surrogacy, we do recognise that many will participate in a commercial model and pay a surrogate (and agency) if it helps them fulfil their desire to have a child. This is evidenced by the number of UK intended parents having children through commercial surrogacy destinations, in particular the United States and Ukraine, and India when this was an option. We note various studies over time consistently showing that the cost of surrogacy in such destinations is high compared to the UK when all costs are included¹². This limits access to those intended parents with the highest incomes, particularly when the surrogacy location is a high-income country like the US where

¹¹ Vasanti Jadva, Helen Prosser & Natalie Gamble (2018): Cross-border and domestic surrogacy in the UK context: an exploration of practical and legal decision-making, Human Fertility, DOI: 10.1080/14647273.2018.1540801

¹² For example: Cafcass, *Cafcass Study of Parental Order Applications made in 2013/14* (2015) and Vasanti Jadva, Helen Prosser & Natalie Gamble (2018): Cross-border and domestic surrogacy in the UK context: an exploration of practical and legal decision-making, Human Fertility, DOI: 10.1080/14647273.2018.1540801

the Law Commissions note that the total cost can be up to £200,000 for twins¹³. Given the high demand for surrogacy, we would be concerned if allowing surrogates to make a profit in the UK led to the surrogacy only being an option for the rich.

4.32 SurrogacyUK supports the reimbursement of a surrogate's actual costs.

SurrogacyUK supports the reimbursement of a surrogate's actual costs

SurrogacyUK supports a reimbursement model that enables a surrogate to recover her actual costs directly related to a domestic surrogacy arrangement. At the end of an arrangement she should not be out of pocket, nor should she be left with unspent funds.

We think the key principle should be that each cost should be as much as is appropriate to satisfy a reasonable need that arises from the surrogacy arrangement. We think that it would be helpful if clear guidance is provided on how this principle should be interpreted, and in particular what constitutes a reasonable (or conversely, unreasonable) need. We recognise that most needs across most pregnancies will be similar - which may explain the prevalence of payments in the range of £10,000 to £15,000 observed by the Law Commissions in available data¹⁴, but some will be particular to an individual. In one example we are aware of, a surrogate who is a keen horsewoman stated in an online discussion on expenses that she had to pay someone to feed and muck out her horses on days when surrogacy commitments or pregnancy-related events meant she was unable to do this herself. We see this as a reasonable need, but it is unlikely to form a core feature of surrogate's expenses.

Furthermore, as our lifestyles and society changes over time, so do our expectations around needs: some will disappear and new ones will arise. Our growing appreciation of the importance of mental wellbeing, for instance, has led to an increasing acceptance of mindfulness-related needs that weren't common a decade ago.

Whilst we feel that setting the types of costs that can be reclaimed would be unreasonable interference, we do think it would be important for the regulator to help set expectations for surrogates and intended parents, perhaps by stating what needs are *normally acceptable*, *normally not acceptable*, or *never acceptable*, and what time period is eligible. These are judgments we make at SurrogacyUK today when asked to give our opinion on a new type of cost, either by a surrogate or intended parents. For example, we would expect guidance to state that costs associated with core, day-to-day living needs during the surrogacy arrangement that also exist before and afterwards - such as housing - are never acceptable for reimbursement.

¹³ The Law Commissions, *Building families through surrogacy: a new law* (2019), p64

¹⁴ The Law Commissions, *Building families through surrogacy: a new law* (2019), p327

We don't think it would be appropriate to fix or cap the amounts that can be reimbursed for costs, either for a specific need or for the surrogacy arrangement overall, since this could lead to surrogates suffering a financial loss as a result, or dissuade women with costs greater than the fix or cap from becoming surrogates. Again, this is because each surrogate's needs and the associated costs are unique.

- To illustrate a divergence of costs associated with one specific need - unpaid leave - Appendix 2 lists the types of jobs SurrogacyUK surrogates told us they do for a living when we polled them. Unsurprisingly, there are a big variety of roles and hours worked, which in turn means there would be a wide cost range associated with replacing incomes when the surrogates need to take unpaid leave. We would expect some clustering that reflects the distribution of income in society.
- To illustrate the divergence of overall costs for surrogacy arrangements, Appendix 3 lists the estimated costs (a proxy for actual cost) for all SurrogacyUK surrogates since we started recording this data in 2016; the amounts range from £6,000 to £23,000 with the median at £12,000 (note: the figures are rounded due to the nature of estimating).

In these examples of costs, both for a specific need and cost for a surrogacy arrangement overall, we cannot see how a fix or cap can be set without disadvantaging some or many surrogates.

Additionally, setting a fixed amount for cost reimbursement (or a cap that operates in practice as a fixed amount) means that some surrogates would make a profit from a surrogacy arrangement and some would be out of pocket. We find this most unsatisfactory and is effectively what happens when a surrogate - either independently or following an organisation's guidance - fixes the amount of payment she receives based on what is perceived to be a 'going rate for expenses' rather than on her own needs.

4.33 SurrogacyUK proposes a new compliance framework for payments to surrogates.

SurrogacyUK proposes a new compliance framework for payments to surrogates

We recognise that if a cost-recovery model is introduced without set cost types or fixed/capped amounts then there is a risk that profit disguised as payments could occur. To mitigate this risk, SurrogacyUK suggests that the costs associated with a surrogacy arrangement should be recorded in an official form that is signed by all parties to the arrangement and countersigned by a representative of a Regulated Surrogacy Organisation. The parties should attest that all payments associated with the surrogacy arrangement are recorded on the form and relate to actual cost-recovery, and the Regulated Surrogacy Organisation should be satisfied that the costs are accurate, appropriate and reasonable.

We think that there should be a requirement for surrogates to record costs they have incurred and intended parents to record payments they have made. Some people who advocate for a fixed payment or for-profit payments say that is complicated and burdensome, but this is what SurrogacyUK asks our surrogates and intended parents to do today without complaint.

The Law Commissions ask whether payments should be made on production of valid receipts or based on an allowance. We think that whilst there should be a duty on surrogates and intended parents to keep accurate records of costs incurred and intended parents of reimbursements made, there should not be a requirement for payments to be made on reimbursement of receipts. SurrogacyUK doesn't operate such a system today because the administrative burden and associated costs would not be popular with our members. If such a system were to be required, then we think it should apply to all domestic surrogacy arrangements, to stop this being a deterrent to people using the New Pathway.

We think compliance would be encouraged if only the amounts recorded on the official form could benefit from tax/benefit privileges and can be enforced by all parties (see sections below for more details).

Finally, we think the courts should have the power in all domestic surrogacy arrangements to direct the parties to remedy any discrepancies between actual payments made and the payment rules, though this should be considered as a separate matter to legal parenthood.

4.34 SurrogacyUK proposes the exclusion of reimbursed costs from tax, national insurance and benefits calculations.

SurrogacyUK proposes the exclusion of reimbursed costs from tax, national insurance and benefits calculations

We believe that not-for-profit surrogacy is a benefit to society delivered by private individuals. We think that this should be recognised by the state by ensuring that the actual costs reimbursed in a domestic surrogacy arrangement are exempt from tax and national insurance and excluded from calculations for means-tested benefits. This would be consistent with the tax and benefits treatment of payments related to other societal benefits delivered by private individuals, for example, fostering allowances.

We think that only payments recorded in the official form should be eligible for such exemptions/exclusions. Any payments made beyond the amounts agreed in the official forms would not be eligible, nor would any payments associated with surrogacy arrangements outside the New Pathway since these would not be recorded in the official form. We think that by making eligibility for exemptions/exclusions a feature of the New Pathway only, this should be a strong incentive for all parties to comply with payment rules and to choose the New Pathway over the Parental Order route.

Currently, there is no statutory requirement of HMRC nor the Department of Work and Pensions to make exempt or to exclude a surrogate's reasonable expenses from such calculations. We know of no guidance on such matters available to either surrogates or officials. In the case of benefits, we are told by surrogates that the implications are usually determined at a local level and only on a case-by-case basis when the situation arises. This means that a surrogate normally has to be in receipt of expenses before she can find out if this will affect any means-tested benefits she receives. A decision to treat reimbursed costs as income can have a significant impact on a surrogate's household finances and it is not something that intended parents can easily compensate because any additional payments they make will also be subject to the same rules. We hear that some surrogates sometimes manage their expenses' payments separately from their household income in the hope that this avoids the issue from arising, although others report that that this could be regarded as fraudulent activity.

We know anecdotally that the lack of clarity over the tax and benefits treatment of expenses worries existing surrogates and acts as a major deterrent to women who are thinking of becoming surrogates. We urge the Law Commissions to resolve this matter in their proposals and for HMRC and the Department of Work and Pensions to resolve this urgently by issuing national guidance clarifying how domestic surrogacy expenses should be treated.

4.35 SurrogacyUK supports the enforceability of surrogacy payments by both parties.

**SurrogacyUK supports the enforceability of
surrogacy payments by both parties**

We think that both parties to a surrogacy arrangement should be able to enforce the payment terms. A surrogate should be able to recover all valid costs that the intended parents agreed to pay. The intended parents should be able to recover any payments for which there isn't a valid cost that they have agreed to pay.

We think that only costs and payments that are recorded in the official form should be enforceable by the parties. Any payments made beyond the amounts agreed in the official forms would not be enforceable by them, nor would any payments associated with surrogacy arrangements outside the New Pathway since these would not be recorded in the official form. We think that by making payment enforceability by the parties a feature of the New Pathway only, this should be a strong incentive for all parties to comply with payment rules and to choose the New Pathway over the Parental Order route.

We think enforceability should be contingent on the parties undertaking a surrogacy arrangement in good faith in the New Pathway, but we don't think it should be linked to any pregnancy or legal parenthood milestones. For example, a surrogate should be able to recover costs incurred from a pregnancy that turns out to be unsuccessful or if she decides to exercise her right to object.

4.4 Regulation of Domestic Surrogacy Arrangements

This section sets out our position on regulation of domestic surrogacy arrangements. In forming our position, we have taken the view that Regulated Surrogacy Organisations should become trusted centres of expertise and competence for all matters relating to domestic surrogacy arrangements. Drawing on SurrogacyUK's experience, we know these organisations will perform the important duty of mediating the relationship between the surrogate and intended parents for the duration of their surrogacy arrangement. We therefore think such organisations should have greater substance than that envisaged by the Law Commissions' proposals.

SurrogacyUK Position:

- Significant services provided to domestic surrogacy arrangements should be regulated (Section 4.41)
- Matching and facilitation services, and performing a statutory role in the New Pathway should only be provided by Regulated Surrogacy Organisations (Section 4.41)
- Regulated Surrogacy Organisations should be UK incorporated entities or charities that operate on a not-for-profit basis (Section 4.43)
- Regulated Surrogacy Organisations should be able to decide what types of surrogacy they support and what regulated services they offer (Section 4.44)
- A surrogacy regulator should be established, but thought needs to be given to how regulation is paid for; if this is borne solely by intended parents then surrogacy arrangements might not follow the New Pathway (Section 4.45)

4.41 SurrogacyUK supports the regulation of significant services provided to domestic surrogacy arrangements.

SurrogacyUK supports the regulation of significant services provided to domestic surrogacy arrangements

SurrogacyUK supports the regulation of any activity where an individual or organisation:

1. provides a matching and facilitation service in relation to domestic surrogacy arrangements
2. performs a statutory role in the New Pathway
3. provides another surrogacy-specific service to parties to a domestic surrogacy arrangement

We think the first two types of activities should only be performed by a Regulated Surrogacy Organisation, and the third type of activity could be performed by any individual or organisation that meets the regulatory requirements, such as a counsellor, clinic, solicitor or accountant.

We think the first and last types of activities should be regulated for all domestic surrogacy arrangements, regardless of whether they follow the New Pathway or

Parental Order route. The issues and risks around these activities that regulation would seek to manage are the same regardless of which pathway is pursued. Moreover, it would be extremely confusing to individuals seeking a surrogacy arrangement if similar services were offered on a regulated and unregulated basis.

Matching and Facilitation

SurrogacyUK thinks that matching and facilitation should include any activities to establish, support or mediate the relationship between a surrogate and intended parents from the point they come into contact with the organisation until the legal parenthood of any child they produce is settled or their surrogacy arrangement has otherwise ended. This matching and facilitating activity would include:

- compiling and/or publishing personal details of surrogates and intended parents for the purposes of a surrogacy arrangement
- facilitating the formation of surrogacy arrangements between surrogates and intended parents by introducing, liaising, promoting or recommending parties to each other
- facilitating, negotiating or advising the agreement of a surrogacy arrangement between parties
- supporting or mediating the relationship between a surrogate and intended parents
- the administration necessary for, and ancillary to, the above services

Private interactions between individuals should not be regulated. We do not think that the provision of social events and online spaces for surrogates and intended parents to interact as private individuals should be considered to be regulated matching and facilitation services, unless the administrators/managers of such events undertake these in conjunction with other regulated matching and facilitation activities. This would allow groups of individuals to continue to interact using social media and to meet in person for the purposes of forming and supporting surrogacy arrangements, without having to fulfil the regulatory obligations of being a regulated surrogacy organisation.

Statutory Role on New Pathway

SurrogacyUK thinks the surrogacy-specific statutory role in the New Pathway should include:

- screening surrogates and intended parents for legal and regulatory eligibility to follow the pathway
- undertaking a suitability-for-surrogacy assessment of surrogates and intended parents (Section 4.52)
- undertaking a welfare-of-child assessment of intended parents in traditional surrogacy arrangements
- witnessing surrogacy agreements, legal parenthood consents and payment consents

4.42 SurrogacyUK thinks the provision of surrogacy-specific services to parties should meet regulatory or professional standards or guidelines.

SurrogacyUK thinks the provision of surrogacy-specific services to parties should meet regulatory or professional standards or guidelines

There are a range of other services that would help to make a surrogacy arrangement on the new pathway a success, but which do not directly involve facilitating or mediating the arrangement, or performing a statutory role on the new pathway. We think such services need not be performed by a Regulated Surrogacy Organisation, but should meet certain regulatory or professional standards or guidelines for surrogacy. This is to ensure that the service providers have the experience and competence to deal with surrogacy specific matters and that their activities don't inadvertently compromise the autonomy of the parties to the surrogacy arrangement.

Such services would include:

- Counselling, in areas such as: surrogacy, fertility, genetics and birth
- Medical screening and treatment from before conception to the birth and beyond
- Antenatal education and birth support
- Legal advice, representation in court, and legal services such as preparation of wills
- Accounting and financial services, such as escrow accounts or income protection insurance

We think the surrogacy-related guidelines for clinics and counsellors that have been added to the latest HFEA Code of Practice are a good example of how this can be delivered.

4.43 SurrogacyUK agrees that surrogacy organisations should be regulated and operate on a not-for-profit basis.

SurrogacyUK agrees that surrogacy organisations should be regulated and operate on a not-for-profit basis

SurrogacyUK welcomes the proposal to establish Regulated Surrogacy Organisations and that only these organisations should be able to offer matching and facilitation services. We suggest this restriction also be extended to performing the statutory role in the New Pathway. This is because people seeking surrogacy arrangements, the state and society must have confidence that the assessments are being made by competent organisations.

We agree with the proposal that such organisations continue to operate on a not-for-profit basis. This means they should not be controlled or influenced by any other entities or

individuals that could profit from the regulated services they undertake. Additionally, the contractual relationships and internal policies and practices that such organisations have must not undermine the autonomy of any party to a surrogacy arrangement. They must offer no inducement, reward, penalty or other terms to surrogates, intended parents, employees or third parties to influence participation in, or the outcome of, a surrogacy arrangement.

SurrogacyUK thinks that the significant role and breadth of responsibilities of Regulated Surrogacy Organisations means these entities should be incorporated and/or charities in the UK and be run by individuals who meet the associated governance requirements. Based on our own experience, we expect that such organisations would require employees, contracts, insurance and so forth in order to operate, which would suggest a need for such legal forms.

4.44 SurrogacyUK supports clear accountability within an organisation for meeting regulatory standards and sanctions if this doesn't happen.

SurrogacyUK supports clear accountability within an organisation for meeting regulatory standards and sanctions if this doesn't happen

SurrogacyUK would most likely seek to become a Regulated Surrogacy Organisation and we would want to offer a full range of matching and facilitation services for all types of surrogacy, as well as perform the statutory role on the New Pathway that we describe above. However, we think it should be possible for a Regulated Surrogacy Organisation to focus on a specific type of surrogacy, e.g. traditional surrogacy only, or to restrict its activity, e.g. only undertaking activities that help surrogates and intended parents to meet or only supporting surrogacy arrangements after the parties have already met. This might enable the "Independent Professional" role that the Law Commissions propose to participate in the new Pathway, whilst meeting the same regulatory standards as other organisations. The compliance framework should be designed in such a way as to allow this to happen and for portability of data to enable surrogates and intended parents to engage different organisations at different points on the New Pathway.

We agree in principle that there should be clear accountability within an organisation for complying with regulation, but we do not hold a specific view as to how this should work nor what the responsibilities of those who hold accountability should be; we think this should be determined by the new regulator. Neither do we have a view as to who should be the regulator; whether this a new independent body or an existing regulator. We have no objection to the HFEA being the regulator, and can see synergy between surrogacy regulation and the Authority's regulation of other forms of assisted reproduction. Whoever the regulator turns out to be, we think they should look at the regulatory needs of surrogacy from first principles so that a fit-for-purpose regulatory framework is established. We don't, therefore, assume that if the HFEA were to be the regulator that their existing model of regulation should be extended to surrogacy.

In terms of sanctions, we think that Regulated Surrogacy Organisations that fail to meet their regulatory obligations should face regulatory penalties including the possibility of losing their licence to operate. Moreover, SurrogacyUK thinks that unlawful activities by

individuals and organisations should be a criminal offence. This should include false representation as a surrogate or a Regulated Surrogacy Organisation. The severity of the sanctions should reflect the fact that surrogacy involves (potentially) vulnerable people, children and significant sums of money.

4.45 SurrogacyUK is concerned that passing regulatory costs to intended parents could deter surrogacy arrangements from following the New Pathway.

SurrogacyUK is concerned that passing regulatory costs to intended parents could deter surrogacy arrangements from following the New Pathway

There will, of course, be costs associated with good regulation, incurred both by the regulator and the surrogacy organisations it regulates. There are several concerns that SurrogacyUK would like to raise around this:

1. Given the relatively small number of domestic surrogacy arrangements, applying the “customer pays” principle to the regulator’s costs (such as is applied by the HFEA today) could place an extremely high cost burden on intended parents. By way of illustration, if the HFEA were to be the regulator and were to employ just one more person to cover surrogacy regulation, then the cost of funding this role could be around £550 per domestic surrogacy arrangement¹⁵. Compare this to the £80 HFEA fee that is collected on each IVF cycle today.
2. In addition, there is the cost of organisations themselves complying with the regulatory requirements, such as introducing the Statutory Role on the New Pathway or reporting to the regulator. Depending on what’s required, SurrogacyUK might - for example - need to:
 - a. upgrade an existing senior role to become accountable to the regulator
 - b. increase staff time to perform the Statutory Role and undertake reporting to the regulator
 - c. increase our compliance training budget.

It’s not unreasonable to estimate that our costs could increase by £50,000+, which would cost our members £300 per annum¹⁶. This is significant when compared to our £50 annual membership renewal fee.

We think the current, relatively low volumes of domestic surrogacy arrangements and the potentially high fixed costs of regulation, mean that the regulatory costs could end up being highly disproportionate relative to organisations’ costs of operating the New pathway. If all costs are recovered from intended parents then this risks encouraging surrogacy arrangements to follow the (much cheaper) Parental Order route instead.

¹⁵ HFEA Business Plan 2019/20; budget £7,058m divided by 68 staff equals £104k per member of staff. 382 parental orders in 2018; assume 50% domestic, equals 191 domestic parental orders. If all domestic parental orders follow New Pathway then cost per arrangement equals £545.

¹⁶ Calculation: £50,000 regulatory costs per annum divided by 160 currently active intended parent solo/couple members of SurrogacyUK equals £313 per intended parent solo/couple per annum

We would like the Law Commissions, when giving further consideration to statutory regulatory requirements, to give thought to how the cost implications of their proposals might be minimised and how these costs will be funded, other than by intended parents alone.

4.5 Other Thoughts on The New Pathway

This section sets out our position on other significant proposals in relation to domestic surrogacy arrangements that have not been covered elsewhere in Section 4.

4.51 SurrogacyUK proposes further incentives to encourage domestic surrogacy arrangements to follow the New Pathway over the Parental Order Route.

SurrogacyUK proposes further incentives to encourage domestic surrogacy arrangements to follow the New Pathway over the Parental Order Route

SurrogacyUK shares the view of the Law Commissions that the biggest incentive to using the New Pathway will be the recognition at birth of the intended parents as the legal parents of the child. We also agree that making reimbursement of expenses enforceable by surrogates is a reasonable incentive.

We do think, however, there is a risk that the New Pathway isn't attractive enough to some surrogates and intended parents, who would continue to use the reformed parental order route. In our 2019 Survey we asked respondents which pathway they were likely to use¹⁷: 66% of surrogates and 78% of intended parent stated the New Pathway. Perhaps these numbers weren't higher because this is still only an abstract concept to most people at this stage, but there were some negative responses from a small minority. Most respondents to our survey were members of SurrogacyUK and are used to our rules and modest fees but we think the new process might not be popular with surrogates and intended parents currently operating on an independent basis. Sometimes our Members choose to pursue an independent arrangement as they wish to opt out of our processes or do not wish to pay recurring fees for a sibling arrangement, which may indicate how people will feel about mandatory requirements and paying for regulatory costs in the New Pathway.

We think there are additional incentives for the New Pathway which the Law Commissions should consider:

- Removing the surrogate's automatic right to become the mother and ensure that intended parents retain legal parenthood unless a court decides otherwise (Section 4.24)
- Allowing intended parents - in addition to surrogates - to enforce aspects of the payment terms (Section 4.35)
- Enabling payments in the new pathway to be excluded from a surrogate's tax, national insurance and means-tested benefits calculations (Section 4.34)
- Removing the mandatory requirement for independent legal advice (Section 4.56)
- Mandating that clinics should only treat surrogacy patients on the New Pathway, which would bring all gestational surrogacy and traditional surrogacy using IUI and IVF into the pathway

¹⁷ Appendix 1, Chart 16

- Seeking alternative ways of funding the cost of regulation that doesn't make using the New Pathway more expensive (see Section 4.45)
- Recovering the cost of Cafcass activities from parental order applicants

4.52 SurrogacyUK proposes the introduction of a suitability-for-surrogacy assessment of surrogates and intended parents in the New Pathway.

SurrogacyUK proposes the introduction of a suitability-for-surrogacy assessment of surrogates and intended parents in the New Pathway

Not everyone is capable of having a successful surrogacy arrangement. A surrogate needs to be able to carry a successful pregnancy and, if she is using her own eggs, she must be fertile. If the intended parents are planning to use their own gametes then they should be fertile too, or have made provisions to use donated gametes. All parties should also have considered the practical and emotional implications of a surrogacy arrangement on their lives and relationships.

Most people, of course, work this out themselves and only opt-in to surrogacy or enter into an arrangement with someone else if they think it is going to succeed. However, SurrogacyUK knows from experience that some people do not make a reasonable assessment of their situation or they require the support of others to do this. If SurrogacyUK has any concerns about prospective surrogates or intended parents, we advise them how these can be addressed or, sometimes refuse their application, pointing them to other options, if appropriate. This is an important part of our screening process and around one third of surrogate applicants do not end up joining our organisation. We think other organisations and people in independent arrangements also perform similar checks to varying degrees.

We think prospective surrogates and intended parents should undergo a suitability-for-surrogacy assessment to ensure that both parties are reasonably capable of delivering their surrogacy intentions and that there isn't a significant risk of harm to either party or their existing children. Whilst we think that requirements should be set by the regulator our own current practice suggests that factors to consider should include:

- Medical suitability, for traditional and gestational surrogacy.
- Surrogacy implications awareness
- Welfare-of-child matters
- Safeguarding matters

The regulator should ensure standardisation and portability of checks and screening undertaken by Regulated Surrogacy Organisations and by others, especially clinics, so that surrogates and intended parents do not need to spend time and money unnecessarily repeating these activities.

Similarly, experienced surrogates and intended parents question the value of repeated screening for factors that are unlikely to change in subsequent surrogacy arrangements, particularly when the same parties are trying to create a sibling.

4.53 SurrogacyUK proposes official forms be introduced for parties to use when recording their consent to statutory legal parenthood and payment requirements.

SurrogacyUK proposes official forms be introduced to record consent to statutory parenthood and payment requirements

SurrogacyUK thinks form and function go together regarding the recording of statutory consent in surrogacy arrangements. We think that where possible, standardised forms and associated guidance in plain English should be provided, following best practice that exists elsewhere today. This would allow parties to a surrogacy arrangement to record their consent without the need to incur costs and expend effort by instructing a lawyer to prepare documents for the same purpose. We think this should be sufficient for most straightforward surrogacy arrangements, but that it shouldn't stop parties from creating bespoke legal documents that have a similar effect if there is a wish or a need to do so.

There may also be situations where the parties need to demonstrate that legal parenthood or payment consent has been given and we imagine that it would be preferable to use standard official forms in such circumstances.

4.54 SurrogacyUK agrees surrogacy agreements should be mandatory, unenforceable written documents.

SurrogacyUK agrees surrogacy agreements should be mandatory, unenforceable written documents

SurrogacyUK is pleased that the Law Commissions are proposing that the preparation of written surrogacy agreements should be mandatory and that these documents should continue to be unenforceable.

In our view, in future a surrogacy agreement should be more accurately thought of – and known as – a “Surrogacy Plan”, since this better reflects its purpose of recording the voluntary actions that parties intend to take during their surrogacy arrangement in order to produce a child. A surrogacy plan should be a separate, but related document to the documentary evidence that is needed to demonstrate that the parties meet all eligibility requirements and that they have provided their consents to the statutory legal parenthood and payments requirements.

We think a written Surrogacy Plan should be the culmination of a process that surrogates and intended parents have followed to reach a shared understanding of their intentions, hopefully building an empathetic and resilient relationship along the way.

The points for discussion and agreement when preparing the plan would normally include:

- what should happen in the pregnancy from trying to conceive to the birth, such as any decisions that intended parents would have had to take if they were trying to carry their own child, covering both lifestyle and medical treatment matters.
- expectations for the relationship between the parties during the pregnancy and beyond. This should include how decision-making should work and how personal information should be handled.

Today such a document often serves as a guidance note for third parties, giving service providers confidence about how the parties to a surrogacy arrangement would like to be treated when a service is being delivered to them. For example, it usually includes a birth plan that sets out how the unique circumstances of the birth should be handled by healthcare professionals. We think this is useful and should continue.

We appreciate that under the current legal framework, such a document usually covers intentions towards legal parenthood and payment, but in future these matters will, of course, be covered by the law once surrogates and intended parents have given their statutory consent. There will be no need for the intended parents to commit in the agreement to making payments, for example, as these will be enforceable in law.

Given the proposed roles and responsibilities of Regulated Surrogacy Organisations on the New Pathway - as discussed in Section 4.4 - SurrogacyUK thinks that such organisations would have the right experience and competence to support the preparation of Surrogacy Plans. Whilst surrogates or intended parents should, of course, be able to seek legal advice when preparing their plans, we do not see why this would be particularly useful in most situations and we strongly disagree that seeking independent legal advice should be mandated, as we discuss in more detail in Section 4.56.

4.55 SurrogacyUK proposes the introduction of a mandatory four week period between giving consent to a surrogacy arrangement in the New Pathway and trying to conceive.

SurrogacyUK proposes the introduction of a mandatory four week period between giving consent to a surrogacy arrangement in the New Pathway and trying to conceive

SurrogacyUK knows, from supporting almost 250 successful surrogacy arrangements, that once a surrogate and intended parents meet there is often a tremendous desire from both parties to make things happen as quickly as possible. We feel that moving at speed can often be at the expense of sound judgment regarding suitability for a surrogacy arrangement, particularly where the parties haven't known each other for very long. At SurrogacyUK, we require surrogates and intended parents to wait three months from when they meet until they start trying to conceive, this time is used to get to know each other better and prepare their surrogacy agreement with less time

pressure. We think that slowing things down is vital. A significant number of our proposed surrogacy arrangements end during this period (an average of six per year, compared to 20-25 surrogacy arrangements that, at any one time, are normally at the stage before trying to conceive). We see this as a positive and important safeguard: better to break up before conception than suffer a difficult surrogacy relationship afterwards, when the implications will be much more significant.

We think these relationship challenges are not unique to SurrogacyUK-supported arrangements, so we suggest that a mandatory period be introduced between giving consent to a surrogacy arrangement on the New Pathway and trying to conceive. This would give the parties time to reflect on the statutory consents they have made and the agreement they have prepared.

4.56 SurrogacyUK disagrees with the proposal for mandatory independent legal advice.

SurrogacyUK disagrees with the proposal for mandatory independent legal advice

SurrogacyUK does not agree that surrogates and intended parents must seek independent legal advice on the New Pathway. We do not think this is needed as a safeguard when giving consent, nor do we think that the legal implications of surrogacy are complicated enough to warrant this for most surrogacy arrangements. We do think, however, that Regulated Surrogacy Organisations should have a duty to identify arrangements that they think need legal input, and - of course - surrogates and intended parents should be able to seek legal advice whenever they see fit.

Surrogates and intended parents must all have capacity to give their consent to a surrogacy arrangement and must give it without any undue influence. We think that providing consent is a continuous process that starts when surrogates and intended parents first contact a Regulated Surrogacy Organisation and stops once the surrogate's right to object ceases or the surrogacy arrangement otherwise comes to an end.

A Regulated Surrogacy Organisation is the only third party the Law Commissions propose would come into contact with surrogates and intended parents for the full duration of a surrogacy arrangement, i.e. from matching and facilitating right through until the right to object to legal parenthood is expired. These will be the only organisations that conduct the suitability checks and work with both surrogate and intended parents - not for one side or the other - and therefore they can form a view around consent. Given the nature of these services, SurrogacyUK thinks it must be a licence-to-operate requirement that such organisations have the competence and processes in place to check that the parties to a surrogacy arrangement provide their consent on an on-going basis and to verify this, for legal parenthood and payment purposes, at the point that statutory consent is provided. If this duty were placed on solicitors instead then we think this could undermine the quality of supervision provided by surrogacy organisations to matching and facilitation activities.

It is suggested by the Law Commissions that there are parallels between the requirement for independent legal advice for preparing pre-nuptial agreements and their proposed similar requirement for surrogacy arrangements. We don't share this view; in the case of a surrogacy arrangement, Registered Surrogacy Organisations are supporting and supervising any consents and informal agreements being made by the parties, whilst there is no equivalent third party involved with couples when they discuss what should happen if their future marriage breaks down.

Surrogates and intended parents must also be able to demonstrate that the arrangement meets the eligibility criteria for making the statutory consents. Based on our experience of supporting surrogacy arrangements in the current legal framework, we think that the eligibility criteria for following the New Pathway and the legal implications of the consents provided are straightforward for most people to understand without the need for professional legal advice. Most of our members do not seek legal advice for their surrogacy arrangements today and most simple queries are dealt with in the Department of Health and Social Security guidance and by our representatives. We are not aware of this approach causing any issues regarding a misunderstanding of the law when parental order applications are considered in court.

Only 32% of responders to the SurrogacyUK 2019 Survey said that legal advice should be mandated¹⁸. We think the estimated £1,000 costs of this advice would be unnecessarily spent in most surrogacy arrangements and might deter some from following the New Pathway.

We suggest that supervising consent and checking legal eligibility should be a core competence of Regulated Surrogacy Organisations. Legal understanding could be supported by new, standard guidance provided by the Department of Health and Social Care or the regulator, alongside clear, standard forms to complete for the statutory Legal Parenthood and Payment consents. We think there should be a requirement for Regulated Surrogacy Organisations to undertake reasonable checks on legal understanding and to complete a risk assessment of legal matters related to a surrogacy arrangement, advising parties to seek independent legal advice where this is felt to be needed.

¹⁸ Appendix 1, Chart 6

5. OUR RESPONSE TO THE CONSULTATION QUESTIONS

This section sets out SurrogacyUK's response to the specific questions asked by the Law Commissions in their consultation paper.

We have answered the questions as if our proposal for legal reform in Section 3 were to be adopted. We would have answered some of them differently if the Law Commissions decide to adopt a different approach to legal parenthood or payments than we have presumed in our answers. Our specific views on possible different approaches to legal parenthood and payments are expressed in Section 4.

We have responded to the questions posed by the Law Commissions that we feel are relevant to SurrogacyUK's activities and where we can make a useful contribution. We have omitted others where we have no comments to make beyond those already made by the SurrogacyUK Working Group for Surrogacy Law Reform in their submission.

Section	Question	Response
5.1	Consultation Question 2 19.2 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.	19.2 SurrogacyUK thinks that such cases should be heard by a District Judge since these are more likely to be problematic domestic surrogacy arrangements that do not meet the eligibility criteria of the New Pathway. This is on the assumption that most or all domestic surrogacy arrangements that are eligible for the New Pathway will follow it.
5.2	Consultation Question 4 19.4 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	19.4 SurrogacyUK agrees.

Section	Question	Response
	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).	
5.3	Consultation Question 5 19.5 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?	19.5 SurrogacyUK agrees.
5.4	Consultation Question 6 19.6 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.	19.6(1) In SurrogacyUK's experience, officers' expenses range from £1000 to over £3000, with these fees being met by the public purse in some sheriffdoms and the applicant in others. This difference in approach, both within Scotland and with the rest of the UK (where such fees are not charged to the applicant), doesn't seem fair or appropriate to us. 19.6(2) We think Scottish courts should have the explicit powers to make such arrangements, if needed. As we have argued elsewhere in our response, this would enable parental rights and responsibilities to better align with the intent of surrogacy arrangements in the period until an application to be determined. 19.6(3) Our Scottish members tell us that once the petition is lodged with the court in Scotland the Parental Order process is straightforward and the four-week timescale within which the report has to be issued is, in many cases, quicker than the equivalent report in England and Wales. A relatively small number of petitions have been made to Scottish courts, however, so the procedure hasn't been tested in all scenarios, for example, contested cases.
5.5	Consultation Question 7 19.7 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,	19.7 SurrogacyUK does not agree. SurrogacyUK thinks that in domestic surrogacy arrangement the intended parents should be the legal parents of the child at birth as long as requirements 19.7(1)-(3) have been met. The intended parents legal parenthood should not be withdrawn automatically if the surrogate exercises

Section	Question	Response
	(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?	her right to object and she should only be able to obtain legal parenthood through a judicial process. See Section 4.2 for more information on our position.
5.6	Consultation Question 8 19.8 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? 19.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.	19.8 SurrogacyUK agrees. 19.9 SurrogacyUK thinks the time period should be the same as for record keeping at fertility clinics, which we understand to be 30 years.
5.7	Consultation Question 9 19.10 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?	19.10 SurrogacyUK agrees. The same rules should apply to gamete donors at regulated surrogacy organisations as apply to gamete donors using clinics. See Section 4.1 for more information on our position.
5.8	Consultation Question 10 19.11 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.	19.11 SurrogacyUK thinks that a traditional domestic surrogacy arrangement using anonymously donated sperm should be prohibited from entering the new pathway since the same rules should apply as to gamete donors using clinics. Outside the new pathway, SurrogacyUK thinks that the parties must satisfy the courts that they had agreed their surrogacy intent prior to conception. See Section 4.1 for more information on our position.
5.9	Consultation Question 11 19.12 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	19.12(1) SurrogacyUK agrees, subject to consideration being given to the right to object ending at birth as well as a fixed period after birth. 19.12(2) SurrogacyUK agrees. 19.12(3) SurrogacyUK thinks that the birth registration should be decoupled from the right to object so that the intended parents can register the birth regardless of the status of the right to object. See Section 4.2 for more

Section	Question	Response
	(3) the defined period should be the applicable period for birth registration less one week. Do consultees agree?	information on our position.
5.10	Consultation Question 12 19.13 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?	19.13 SurrogacyUK does not agree. We think the intended parents should acquire legal parenthood at birth and retain this until a court decides otherwise. There should be a legal process that can be initiated if the surrogate wishes to request legal parenthood. See Section 4.2 for more information on our position.
5.11	Consultation Question 13 19.14 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?	19.14 SurrogacyUK does not agree. This would not be relevant under our proposal that the intended parents retain legal parenthood during the period in which the surrogate has a right to object and, if she objects, until the court makes a decision. See Section 4.2 for more information on our position.
5.12	Consultation Question 14 19.15 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;	19.15 SurrogacyUK agrees.

Section	Question	Response
	<p>(2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and</p> <p>(3) there should be no requirement for any welfare assessment of the child after his or her birth.</p> <p>Do consultees agree?</p>	
5.13	<p>Consultation Question 15</p> <p>19.16 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.</p> <p>Do consultees agree?</p> <p>19.17 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.</p>	<p>19.16 SurrogacyUK doesn't agree with the context of the question. We think that if a surrogate wishes to become a legal parent then she should apply to a court to obtain legal parenthood for herself and her spouse or civil partner, if appropriate.</p> <p>19.17 SurrogacyUK thinks that for surrogacy arrangements outside the new pathway, then the surrogate's spouse or civil partner should not normally be a legal parent of the child born as a result of the arrangement.</p>
5.14	<p>Consultation Question 16</p> <p>19.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:</p> <p>(1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and</p> <p>(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.</p> <p>Do consultees agree?</p> <p>19.19 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.</p> <p>Do consultees agree?</p>	<p>19.18 SurrogacyUK disagrees. In the new pathway, where a child born of a surrogacy arrangement is stillborn, then the intended parents should be the legal parents of the child unless a court decision is made otherwise.</p> <p>19.19 SurrogacyUK agrees.</p> <p>See Section 4.2 for more information on our position.</p>
5.15	<p>Consultation Question 16</p> <p>19.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate</p>	<p>19.20 SurrogacyUK agrees.</p>

Section	Question	Response
	<p>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.</p> <p>Do consultees agree?</p>	
5.16	<p>Consultation Question 18</p> <p>19.21 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.</p>	<p>19.21 SurrogacyUK thinks intended parents should acquire legal parenthood at birth. This is consistent with our view that the intended parents should be the legal parents unless a court decides otherwise.</p> <p>See Section 4.2 for more information on our position.</p>
5.17	<p>Consultation Question 19</p> <p>19.22 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.</p> <p>Do consultees agree?</p> <p>19.23 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:</p> <p>(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:</p> <p>(a) for an order for appointment as guardian of the child, and</p> <p>(b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or</p> <p>(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.</p>	<p>19.22 SurrogacyUK disagrees, instead the intended parents should be registered as the child's parents until a court decides otherwise.</p> <p>19.23(1) SurrogacyUK agrees.</p> <p>19.23(2) SurrogacyUK does not agree.</p> <p>See Section 4.2 for more information on our position.</p>

Section	Question	Response
5.18	<p>Consultation Question 20</p> <p>19.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:</p> <p>(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;</p> <p>(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</p> <p>(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.</p> <p>Do consultees agree?</p>	<p>19.24 SurrogacyUK disagrees. We think the law should be modelled on what would happen when a solo parent registers the birth of a child that was conceived naturally and carried by her. In this scenario, she would be legally obliged to register the father of the child if she knew who this was. Since this is deemed to be in the interests of the child in this scenario, then we think it is also in the interests of a child born through surrogacy. If we take this as the starting point then:</p> <p>19.24(1) the applicant should not have to make a declaration that it was always intended that there would only be a single applicant for a parental order, but instead they would be legally required to supply the name and contact details of the other intended parent if there was one party to the surrogacy arrangement that resulted in the birth of the child.</p> <p>19.24(2) if details of another intended parent are supplied, then that person must be party to the parental order unless they can demonstrate that they withdrew from the surrogacy arrangement.</p> <p>19.24(3) this is not valid in this situation.</p> <p>SurrogacyUK thinks that this provision should be applicable to both solo and couple intended parents, i.e. in the case of a couple, they should declare if another intended parent had been party to the surrogacy arrangement that produced a birth. We think, however, that it should be possible to vary a surrogacy agreement until the point of conception, as long as this has the consent of all parties. This would allow for an intended parent who no longer wishes to be party to the surrogacy arrangement to be removed from the agreement. If one party unilaterally removes themselves from the agreement then it should become void.</p>

Section	Question	Response
5.19	<p>Consultation Question 21</p> <p>19.25 We invite consultees' views as to:</p> <p>(1) a temporary three-parent model of legal parenthood in surrogacy cases; and</p> <p>(2) how the legal parenthood of the surrogate should be extinguished in this model.</p>	<p>19.25 SurrogacyUK does not think a temporary three parent model of legal parenthood should exist in surrogacy arrangements. We do not think it reflects the shared intentions of surrogates and intended parents in practice.</p>
5.20	<p>Consultation Question 22</p> <p>19.26 We invite consultees' views:</p> <p>(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</p> <p>(2) if so, as to whether should this oversight be:</p> <p>(a) administrative, or</p> <p>(b) judicial.</p>	<p>19.26 SurrogacyUK thinks there should be a suitability for surrogacy check for surrogates and intended parents. This should be an administrative check performed by Regulated Surrogacy Organisations, with the regulator providing guidance on the requirements.</p>
5.21	<p>Consultation Question 23</p> <p>19.27 In respect of England and Wales, we invite consultees' views as to:</p> <p>(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</p> <p>(2) if so, as to what those additional factors should be.</p>	<p>19.27 SurrogacyUK thinks that, given the language used by some judges in recent surrogacy cases about the need to best reflect the child's 'true identity' (or similar), it is possible that this should be a factor that should be considered. This would also reflect Art8 of UNCRC, which states 'States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference'. Though this might be considered to come under 'emotional needs' (S1(3)(b)) or 'background' (S1(3)(d)), it could be that this should be spelled out more clearly (though perhaps in guidance to interpretation of S1(3)).</p>
5.22	<p>Consultation Question 24</p> <p>19.28 In respect of England and Wales, we invite consultees' views:</p> <p>(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</p> <p>(2) what those additional factors should be.</p>	<p>19.28 SurrogacyUK agrees with the principles contained within the checklist but, as these are written for adoption cases, we would prefer for a surrogacy checklist to be written into the new law/Code of Practice, so as to avoid conflation of surrogacy with adoption.</p>

Section	Question	Response
5.23	Consultation Question 25 19.29 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.	19.29 SurrogacyUK agrees.
5.24	Consultation Question 26 19.30 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?	19.30 SurrogacyUK agrees.
5.25	Consultation Question 27 19.31 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?	19.31(1) SurrogacyUK agrees. 19.31(2) SurrogacyUK does not agree with the process that is proposed if the surrogate exercises her right to object. In such situations, we think that the intended parents should continue to be the legal parents of the child and have parental responsibility. This should be the case until such time as the surrogate obtains a court order otherwise. See Section 4.2 for more information on our position.
5.26	Consultation Question 28 19.32 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?	19.32 SurrogacyUK does not agree. It does not reflect the reality of surrogacy practice nor the wishes of surrogates or intended parents when they have been surveyed on this matter. See Section 4.2 for more information on our position.
5.27	Consultation Question 29 19.33 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.	19.33 SurrogacyUK does not think that parental responsibility should be shared, but instead only the intended parents should have parental responsibility unless a court order is obtained otherwise. See section 4.2 for more information on our position.

Section	Question	Response
5.28	<p>Consultation Question 30</p> <p>19.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?</p>	19.34 SurrogacyUK agrees and thinks that all domestic surrogacy arrangements, with the exception of those using anonymous gametes, should be brought in the scope of the new pathway.
5.29	<p>Consultation Question 32</p> <p>19.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.</p> <p>19.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.</p>	<p>19.36 SurrogacyUK thinks that all domestic surrogacy arrangements, with the exception of those using anonymous gametes, should be in the scope of the New Pathway.</p> <p>19.37 People who meet independently could use a regulated surrogacy organisation to meet the requirements of the new pathway.</p>
5.30	<p>Consultation Question 33</p> <p>19.38 We provisionally propose that:</p> <p>(1) there should be regulated surrogacy organisations;</p> <p>(2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and</p> <p>(3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.</p> <p>Do consultees agree?</p>	<p>19.38(1) SurrogacyUK agrees.</p> <p>19.38(2) SurrogacyUK doesn't agree, but instead thinks they should be incorporated and/or charities in the UK.</p> <p>19.38(3) SurrogacyUK agrees in principle.</p> <p>See Section 4.4 for more information on our position.</p>
5.31	<p>Consultation Question 34</p> <p>19.39 We provisionally propose that the person responsible must be responsible for:</p> <p>(1) representing the organisation to, and liaising with, the regulator;</p> <p>(2) managing the regulated surrogacy organisation with sufficient care, competence and skill;</p> <p>(3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;</p> <p>(4) training any staff, including that of the person responsible; and</p> <p>(5) providing data to the regulator and to such other person as required by law.</p> <p>Do consultees agree?</p> <p>19.40 We invite consultees to identify any other responsibilities which a responsible individual should have.</p> <p>19.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.</p>	<p>19.39 SurrogacyUK agrees with this proposal in principle, but suggests that in practice the person(s) accountable and the list of responsibilities be determined by the regulator.</p> <p>See Section 4.4 for more information on our position.</p>

Section	Question	Response
5.32	Consultation Question 35 19.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?	19.42 SurrogacyUK agrees. See Section 4.4 for more information on our position.
5.33	Consultation Question 36 19.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.	19.43 SurrogacyUK view is set out in Section 4.4.
5.34	Consultation Question 37 19.44 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? 19.45 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.	19.44 SurrogacyUK agrees. 19.45 SurrogacyUK view is set out in Section 4.4.
5.35	Consultation Question 38 19.46 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.	19.46 SurrogacyUK's view is set out in Section 4.4
5.36	Consultation Question 39 19.47 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? 19.48 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.	19.47 SurrogacyUK neither agrees or disagrees. See Section 4.4 for more information on our position. 19.48 SurrogacyUK thinks the regulator should determine the best way to set duties and standards, and monitors compliance in surrogacy. Whilst Section 14 of the HFEA's Code of Practice already applies to surrogacy, a different approach to clinical regulation may well be required when the full range of regulated activities offered by Regulated Surrogacy Organisations is considered.
5.37	Consultation Question 40 19.49 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?	19.49 SurrogacyUK agrees. See Section 4.5 for more information on our position.

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5.38	Consultation Question 41 19.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?	19.50 SurrogacyUK agrees, subject to the requirement that any service that is provided by a Regulated Surrogacy Organisation is done so on a not-for-profit basis. See Section 4.4 for more information on our position.
5.39	Consultation Question 42 19.51 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?	19.51 SurrogacyUK agrees.
5.40	Consultation Question 43 19.52 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?	19.52 SurrogacyUK agrees.
5.41	Consultation Question 44 19.53 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?	19.53 SurrogacyUK thinks the legal parents of a child born through surrogacy should be recorded as the parents on the birth certificate. We think that a decision on whether to include any other surrogacy-related information, however, should be considered as part of a wider review of the birth registration system, taking into account what information will appear on the proposed National Register of Surrogacy Arrangements.
5.42	Consultation Question 45 19.54 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.	19.54 SurrogacyUK thinks that the birth registration system requires reform to at least be able to accommodate the legal parenthood scenarios that arise from a domestic surrogacy arrangement. Consideration should also be given as to whether other surrogacy-related information should be included, taking into account what information will appear on the proposed National Register of Surrogacy Arrangements.

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5.44	<p>Consultation Question 47</p> <p>19.56 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?</p> <p>19.57 We provisionally propose that:</p> <p>(1) the register should be maintained by the Authority;</p> <p>(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:</p> <p>(a) identifying information about all the parties to the surrogacy arrangement, and</p> <p>(b) non-identifying information about those who have contributed gametes to the conception of the child; and</p> <p>(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?</p>	<p>19.56 SurrogacyUK agrees.</p> <p>19.57 SurrogacyUK agrees, subject to the same principles applying to the surrogacy register as to the existing donor register.</p>
5.45	<p>Consultation Question 48</p> <p>19.58 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.</p>	<p>119.58 SurrogacyUK agrees, subject to the same principles applying to the surrogacy register as to the existing donor register.</p>
5.46	<p>Consultation Question 49</p> <p>19.59 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?</p> <p>19.60 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:</p>	<p>119.59 SurrogacyUK agrees, subject to the same principles should apply to the surrogacy register as to the existing donor register.</p> <p>119.60 SurrogacyUK thinks the same principles should apply to the surrogacy register as to the existing donor register.</p>

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	<p>(1) where his or her legal parents have consented;</p> <p>(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</p> <p>(3) in any other circumstances.</p>	
5.47	<p>Consultation Question 50</p> <p>19.61 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.</p>	19.61 SurrogacyUK thinks this is only relevant in traditional surrogacy arrangements and we support this provision in such situations for both the children born through surrogacy and the surrogate's own children
5.48	<p>Consultation Question 51</p> <p>19.62 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.</p> <p>Do consultees agree?</p> <p>19.63 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.</p>	<p>19.62 SurrogacyUK agrees.</p> <p>19.63 SurrogacyUK agrees.</p>
5.49	<p>Consultation Question 52</p> <p>19.64 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:</p> <p>(1) if they are genetically related through the surrogate; and/or</p> <p>(2) if they are not genetically related through the surrogate.</p>	19.64 SurrogacyUK supports this in both scenarios.
5.50	<p>Consultation Question 53</p> <p>19.65 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.</p>	19.65 SurrogacyUK thinks the law should be modelled on what would happen when a solo parent registers the birth of a child that was conceived naturally and carried by her. In this scenario, she would be legally obliged to register the father of the child if she knew who this was. Since this is deemed to be in the interests of the child in this scenario, then we think it is also in the interests of a child born through

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		<p>surrogacy. If we take this as the starting point then:</p> <ul style="list-style-type: none"> - the applicant should not have to make a declaration that it was always intended that there would only be a single applicant for a parental order, but instead they would be legally required to supply the name and contact details of the other intended parent if such a person was party to the surrogacy arrangement that resulted in the birth of the child. - if details of another intended parent are supplied, then that person must be party to the parental order unless they can demonstrate that they withdrew from the surrogacy arrangement.
5.51	<p>Consultation Question 54</p> <p>19.66 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?</p>	<p>19.66 SurrogacyUK doesn't agree, but instead thinks that the wording should say that the time limit is normally six months. This is to encourage timely applications, which are in the interests of the child, but doesn't preclude late applications.</p>
5.52	<p>Consultation Question 55</p> <p>19.67 We provisionally propose that:</p> <p>(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;</p> <p>(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:</p> <p>(a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or</p> <p>(b) following a determination by the court that the child should live with the intended parents; and</p> <p>(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)</p>	<p>19.67 SurrogacyUK agrees.</p>

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	Act 2007. Do consultees agree?	
5.53	<p>Consultation Question 56</p> <p>19.68 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.</p> <p>Do consultees agree?</p> <p>19.69 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.</p>	<p>19.68 SurrogacyUK agrees. We also think the surrogate should normally be domiciled in the UK</p> <p>19.69 SurrogacyUK thinks the test should be designed to reduce the risk of overseas intended parents coming here with the intention of leaving again when the child is born. See Section 4.1 for more details on our position.</p>
5.54	<p>Consultation Question 57</p> <p>19.70 We invite consultees' views on whether:</p> <p>(1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or</p> <p>(2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.</p>	<p>19.70 SurrogacyUK thinks that the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.</p>
5.55	<p>Consultation Question 58</p> <p>19.71 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.</p> <p>Do consultees agree?</p>	<p>19.71 SurrogacyUK agrees, subject to a flexible definition of "home".</p>
5.56	<p>Consultation Question 59</p> <p>19.72 We provisionally propose that the new pathway –</p> <p>(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</p> <p>(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.</p> <p>Do consultees agree?</p> <p>19.73 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.</p> <p>19.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the</p>	<p>19.72(1) SurrogacyUK agrees.</p> <p>19.72(2) SurrogacyUK does not agree that double donation of gametes should only be permitted in cases of medical necessity. In the SurrogacyUK 2019 Survey there near universal - support for a medical necessity requirement for double donation (Appendix 1, Chart 18) and a small minority of our Legal Reform Project Team and Board of Trustees also felt that there should be a medical necessity requirement. As an organisation, however, we note that there is no such medical requirement for double donation in cases where a woman can carry a child and we have concluded that it is important that the same legal principle should apply to double donation in surrogacy. We therefore</p>

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	conception of the child in the parental order pathway should be retained in international surrogacy arrangements. Do consultees agree?	do not think there should be a statutory requirement of medical necessity for using donated gametes/embryos in surrogacy, but instead that the reasons for seeking double donation should be considered as a factor in screening before conception in the New Pathway. We don't think this will be a common occurrence and we think each case should be considered on its own merits. 19.73 SurrogacyUK thinks that surrogacy with double donation of gametes should be permitted under the parental order pathway if the parties can satisfy the courts that they had agreed their surrogacy intent prior to conception. See Section 4.1 for more information on our position.
5.57	Consultation Question 60 19.75 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?	19.75 SurrogacyUK does not agree that the requirements for a genetic link is retained for domestic cases outside the new pathway, but instead that the parties must satisfy the courts that surrogacy intent was agreed prior to conception in order to qualify for a parental order. See Section 4.1 for more information on our position.
5.58	Consultation Question 61 19.76 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?	19.76 SurrogacyUK doesn't agree. We don't think this requirement is necessary since we think the former partner should be a legal parent of the child and be the second applicant for the parental order. See our answer to Question 5.56 for more details.
5.59	Consultation Question 62 19.77 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.	19.77 SurrogacyUK does not think that surrogacy arrangements should only be permitted in cases of medical necessity. In the SurrogacyUK 2019 Survey there was strong - but not universal - support for a medical necessity requirement for surrogacy (Appendix 1, Chart 17). A significant minority

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	19.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.	of our Legal Reform Project Team and Board of Trustees also felt that there should be a medical necessity requirement. As an organisation, however, we concluded that it was more important that the same legal principle should apply to surrogacy as to other forms of assisted reproduction. We therefore do not think there should be a statutory requirement of medical necessity for surrogacy in either pathway, but instead that the reasons for seeking surrogacy should be considered as a factor in screening before conception in the New Pathway. We don't think this will be a common occurrence and we think each case should be considered on its own merits.
5.60	<p>Consultation Question 63</p> <p>19.79 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.</p> <p>Do consultees agree?</p> <p>19.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:</p> <p>(1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or</p> <p>(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.</p> <p>19.81 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.</p> <p>Do consultees agree?</p>	<p>19.79 SurrogacyUK agrees.</p> <p>19.80 SurrogacyUK agrees.</p> <p>19.81 SurrogacyUK agrees.</p>
5.61	<p>Consultation Question 64</p> <p>19.82 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</p>	<p>19.82 SurrogacyUK agrees.</p> <p>19.83 SurrogacyUK does not think that under the new pathway there should be a maximum age limit for intended parents, but that their age</p>

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	<p>account in the assessment of the welfare of the child in applications to grant a parental order.</p> <p>Do consultees agree?</p> <p>19.83 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.</p> <p>19.84 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.</p> <p>Do consultees agree?</p>	<p>should be taken into account in the welfare of the child assessment.</p> <p>19.84 SurrogacyUK agrees. We think people should be at least 18 years old when they agree to have a surrogacy arrangement. In the New Pathway, this would be satisfied by the mandatory process of providing consents prior to conception. In the Parental Order route, the court should be satisfied that all parties were 18 and had agreed their surrogacy intent prior to conception.</p>
5.62	<p>Consultation Question 65</p> <p>19.85 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.</p> <p>Do consultees agree?</p> <p>19.86 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.</p> <p>Do consultees agree?</p>	<p>19.85 SurrogacyUK does not agree, but instead thinks that surrogates should be at least 18 years old when they agree to have a surrogacy arrangement. In the Parental Order route, the court should be satisfied that all parties were 18 and had agreed their surrogacy intent prior to conception.</p> <p>19.86 SurrogacyUK agrees. In the New Pathway, this would be satisfied by the mandatory process of providing consents prior to conception.</p>
5.63	<p>Consultation Question 66</p> <p>19.87 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.</p> <p>Do consultees agree?</p> <p>19.88 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.</p>	<p>19.87 SurrogacyUK agrees.</p> <p>19.88 SurrogacyUK already undertakes the types of testing set out in the Code of Practice for traditional surrogacy arrangements outside a licensed clinic and so thinks there is no reason not to require them for the new pathway.</p>
5.64	<p>Consultation Question 67</p> <p>19.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:</p> <p>(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</p>	<p>19.89(1) SurrogacyUK agrees.</p> <p>19.89(2) SurrogacyUK agrees, subject to counsellors also meeting the requirements set out in the HFEA Code of Practice at paragraphs 14.7 to 14.14.</p>

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	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?	
5.65	Consultation Question 68 19.90 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?	19.90 SurrogacyUK does not agree. See Section 4.5 for more information on our position.
5.66	Consultation Question 69 19.91 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? 19.92 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.	19.91 SurrogacyUK agrees. 19.92 SurrogacyUK agrees to the list, subject to it being non-exhaustive.
5.67	Consultation Question 70 19.93 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.	19.93 SurrogacyUK does not think there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the New Pathway. Our organisation has a number of child-free surrogates and we see no difference in outcomes between surrogates with and without children.

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5.68	Consultation Question 71 19.94 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?	19.94 SurrogacyUK agrees that this should not be a statutory requirement, but instead the surrogate's obstetric history should be considered as a factor in screening before conception in the New Pathway. This would identify any surrogates with increased risks who might benefit from obstetric counselling before deciding whether to proceed with an arrangement.
5.69	Consultation Question 72 19.95 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.	19.95 See Section 4.3 for SurrogacyUK's views on the method of reimbursing a surrogate's costs.
5.70	Consultation Question 73 19.96 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".	19.96 SurrogacyUK does not think it's helpful to make a distinction between "essential costs (this question) and "additional costs" (Question 5.71) since what is essential to one person might not be to another. For example, in London the most efficient way for a surrogate to travel to appointments may be by public transport, whilst for a surrogate living in the countryside the only option might be by taxi or a car.
5.71	Consultation Question 74 19.97 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.	19.97 SurrogacyUK does not think it's helpful to make a distinction between "essential costs (Question 5.70) and "additional costs" (this question) since what is essential to one person might not be to another. For example, in London the most efficient way for a surrogate to travel to appointments may be by public transport, whilst for a surrogate living in the countryside the only option might be by taxi or a car. Instead we think these costs should be in a category called "pregnancy costs".
5.72	Consultation Question 75 19.98 We invite consultees' views as to: (1) whether intended parents should be	19.98 SurrogacyUK thinks that intended parents should be permitted to reimburse actual costs specific to a surrogacy arrangement

Section	Question	Response
	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.	and pregnancy. We do not think, however, that any expenses related to maintaining contact after the birth should be considered part of the surrogacy arrangement and so should be excluded from this and any other category.
5.73	Consultation Question 76 19.99 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).	19.99 SurrogacyUK thinks that intended parents should be able to pay their surrogate her actual lost earnings.
5.74	Consultation Question 77 19.100 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).	19.100(1) SurrogacyUK thinks this should be permitted where there is reasonable evidence to support the request, for example: past pattern of overtime/commission. 19.100(2) SurrogacyUK thinks this should be permitted where there is concrete evidence that potential earnings have been foregone e.g. a job offer that cannot be accepted because of the surrogacy arrangement.
5.75	Consultation Question 78 19.101 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.	19.101 See Section 4.3 for SurrogacyUK's views on a surrogate's entitlement to means-tested benefits.
5.76	Consultation Question 79 19.102 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	19.102(1)&(3) SurrogacyUK thinks if there is an actual cost associated with the pain and inconvenience arising from the pregnancy and childbirth or from specific medical conditions then the intended parents should pay for this, for example: unpaid leave from work. The parties should be allowed to agree in advance a cap on the amount that the intended parents

Section	Question	Response
	<p>ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.</p> <p>19.103 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.</p> <p>19.104 We invite consultees' views as to whether the level of compensation payable should be:</p> <p>(1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or</p> <p>(2) left to the parties to negotiate.</p>	<p>could pay in relation to unplanned and potentially high value costs, such as care needs or income replacement. It may be possible to take out financial protection products (insurance) to cover rare, but possibly costly situations like this and we think that the legal framework should be designed in such a way as to encourage the development of such products.</p> <p>19.102 (2), 19.103 & 19.104</p> <p>SurrogacyUK thinks it's not appropriate for a surrogate to receive compensation payments from intended parents for having routine medical treatments associated with the pregnancy or for any unforeseen medical complications which - whilst unfortunate - arise from the act being pregnant. A surrogate has freely and willingly chosen to carry a child for someone else and is not a victim who should receive compensation for 'harm' done to her, which is the usual basis of a PSLA claim.</p>
5.77	<p>Consultation Question 80</p> <p>19.105 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.</p>	<p>19.105 SurrogacyUK does not think compensation is legitimate, as stated in our response to Q102-104. We think, however, that financial protection and insurance products such as life insurance and critical illness/disability insurance should be allowed to give the surrogate's family financial stability and to replace lost income or the cost of looking after dependents for a period of time following her death. We think that the legal framework should be designed in such a way as to encourage the development of surrogacy-specific products and that thought should be given as to whether some or all of them should be mandated in the new pathway.</p>

Section	Question	Response
5.78	<p>Consultation Question 81</p> <p>19.106 We invite consultees' views as to whether:</p> <p>(1) intended parents should be able to buy gifts for the surrogate; and</p> <p>(2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.</p>	<p>19.106 SurrogacyUK does not think it is the role of the state to regulate gifts between individuals and, as in many other relationship situations, it's perfectly normal for surrogates and intended parents to give each other gifts. Gifts should not form part of the surrogacy arrangement, specifically the financial agreement. Gifts in a surrogacy arrangement should be treated by the tax and benefits system, the same way as any other gifts between private individuals i.e. an allowance should be made for a certain value of gifts, however, above which they should be treated as income and should be declared as such by either side.</p>
5.79	<p>Consultation Question 82</p> <p>19.107 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.</p> <p>19.108 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:</p> <p>(1) any sum agreed between the parties to the surrogacy; or</p> <p>(2) a fixed fee set by the regulator.</p> <p>19.109 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:</p> <p>(1) no other payments;</p> <p>(2) essential costs relating to the pregnancy;</p> <p>(3) additional costs relating to the pregnancy;</p> <p>(4) lost earnings;</p> <p>(5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or</p> <p>(6) gifts.</p>	<p>19.107, 19.108 & 19.109</p> <p>SurrogacyUK does not think a surrogate should be allowed to profit from a domestic surrogacy arrangement under any circumstance and so would not support the payment of a fee. See Section 4.3 for more information on our position.</p>
5.80	<p>Consultation Question 83</p> <p>19.110 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.</p> <p>19.111 We invite consultees' views as to whether, if the law permits a fee payable to the</p>	<p>19.110 SurrogacyUK does not support the payment of a fee. Notwithstanding this, we think that a surrogate should be able to recover the costs associated with the pregnancy to the point of, and including, the miscarriage or termination and any costs associated with recovering from</p>

Section	Question	Response
	<p>surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:</p> <p>(1) in the first trimester of pregnancy only;</p> <p>(2) to any miscarriage or termination; or</p> <p>(3) some other period of time (please specify).</p>	<p>such an event.</p> <p>19.111 SurrogacyUK does not support the payment of a fee. See Section 4.3 for more information on our position.</p>
5.81	<p>Consultation Question 84</p> <p>19.112 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.</p> <p>Do consultees agree?</p>	<p>19.112 SurrogacyUK agrees. See Section 4.3 for more information on our position.</p>
5.82	<p>Consultation Question 87</p> <p>19.115 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:</p> <p>(1) for cases within the new pathway to parenthood; and</p> <p>(2) for cases where a parental order is made after the birth of the baby.</p>	<p>19.115 SurrogacyUK's thoughts on compliance with payment rules are set out in Section 4.3.</p>
5.83	<p>Consultation Question 88</p> <p>19.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.</p> <p>Do consultees agree?</p> <p>19.117 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.</p> <p>Do consultees agree?</p>	<p>19.116 We partially agree. We think that the financial terms should be enforceable by both the surrogate and the intended parents</p> <p>19.117 We partially agree. We think that there should be no enforceable terms related to the lifestyle of either the surrogate or the intended parents</p> <p>See Sections 4.3 for more information on our position.</p>
5.84	<p>Consultation Question 97</p> <p>19.129 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.</p> <p>Do consultees agree?</p>	<p>19.129 SurrogacyUK agrees, subject to this guide also containing information on domestic surrogacy arrangements and an explanation of the different processes that may apply to the two.</p>
5.85	<p>Consultation Question 101</p> <p>19.136 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.</p>	<p>19.136 SurrogacyUK thinks that there should be statutory surrogate partner leave that allows a surrogate's spouse, civil partner or partner to take time off work to:</p> <ul style="list-style-type: none"> - Fulfil their statutory obligations in a surrogacy arrangement, such as screening

Section	Question	Response
		<p>- Support the surrogate recover from the birth, with the amount of time the same as Statutory Paternity Leave.</p> <p>SurrogacyUK suggests the language used is important; this person isn't a father in this situation.</p> <p>See Appendix 4 for more information on our position.</p>
5.86	<p>Consultation Question 102</p> <p>19.137 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.</p> <p>Do consultees agree?</p>	<p>19.137 SurrogacyUK agrees and suggests that this be called surrogacy parenting allowance since there might not be a mother.</p> <p>See Appendix 4 for more information on our position.</p>
5.87	<p>Consultation Question 103</p> <p>19.138 We invite consultees' views as to:</p> <p>(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, antenatal appointments or any other reason; and</p> <p>(2) if reform is needed, suggestions on reform.</p>	<p>19.138(1) SurrogacyUK thinks there is a need for reform.</p> <p>19.138(2) SurrogacyUK suggests that aligning the provision of surrogacy parenting leave with that of adoption in order to prepare for their child - two weeks prior to placement/birth - would seem appropriate. In addition, at least one intended parent should receive the same leave as a woman who is carrying their own child would be entitled to take during her own pregnancy.</p> <p>See Appendix 4 for more information on our position.</p>
5.88	<p>Consultation Question 104</p> <p>19.139 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.</p>	<p>19.139 SurrogacyUK thinks the terminology should be changed to include the scenario of a woman inducing lactation, who is not a pregnant woman, and a surrogate expressing milk, who is not a nursing mother, following their return to work.</p> <p>See Appendix 4 for more information on our position.</p>
5.89	<p>Consultation Question 105</p> <p>19.140 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.</p>	<p>19.140 SurrogacyUK thinks that the Department of Employment should develop guidance for employers as to how surrogacy in the UK operates; what the statutory employment implications of this are; and, to highlight good practice regarding discretionary benefits offered to employees.</p>

Section	Question	Response
		See Appendix 4 for more information on our position.
5.90	<p>Consultation Question 106</p> <p>19.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.</p>	<p>19.141 SurrogacyUK agrees that the issue highlighted by the Law Commission with regard to the descent of titles is one that is bound up with a wider discussion on donor conception. While we look forward to the government bringing forward legislation that provides for the descent of titles to donor conceived children, we recognise that this is beyond the scope of this consultation. We note that the same issue is also pertinent to the succession to the Crown. Indeed this matter was raised during debate in the House of Lords of the Succession to the Crown Bill (now Act 2014). We look forward to the Government taking steps to also address this matter.</p>
5.91	<p>Consultation Question 107</p> <p>19.142 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.</p> <p>19.143 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.</p> <p>19.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.</p>	<p>19.142 SurrogacyUK thinks that there is a need for significant improvement to standardise the policies and the approach taken by all hospitals that may at some point deal with surrogacy.</p> <p>19.143 SurrogacyUK thinks that there should be more explicit guidance around birth. For example, in theatre settings where elective surgery is to take place there should always be room to have intended parents present alongside the surrogate and birth partner (if the surrogate so wishes). Small steps such as these will help eliminate friction points that are easily surmountable. In healthcare, there is a wealth of 'mandatory' training that takes place with varying levels of importance. Surrogacy, especially for those professionals who deal with the birth, would benefit from having an interesting, engaging elearning package that would improve the understanding of all aspects of surrogacy. This could be something enforced by the Department of Health and Social Care.</p>

Section	Question	Response
		19.144 SurrogacyUK thinks that a mid-pregnancy meeting with a senior midwife to discuss care plans should be made standard across all surrogacy arrangements.
5.92	<p>Consultation Question 114</p> <p>19.152 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:</p> <p>(1) their profession; and</p> <p>(2) what they would charge to provide such a service.</p>	<p>19.152 SurrogacyUK thinks Regulated Surrogacy Organisations are best placed to undertake the activities that would be performed by the independent professional because such organisations will already be performing such activities under the supervision of the regulator. There is no reason why parties to a surrogacy arrangement who have met independently couldn't then use a regulated organisation to meet the screening, agreement and consent requirements of the new pathway. Indeed, this is something that SurrogacyUK already supports today: we welcome people who have met independently, but subsequently come to us for our screening checks, surrogacy agreement facilitation or ongoing support. Given the probable client volume of regulated surrogacy organisations, this is likely to be a cost effective way of delivering this service.</p> <p>Independent professionals wanting to offer such surrogacy-related services should become Regulated Surrogacy Organisations in order to do so. There should be no requirement for an independent professional (or indeed a surrogacy organisation) to operate as a full-service Regulated Surrogacy Organisation, they could choose the services they wish to deliver and be regulated accordingly.</p> <p>See Section 4.4 for more information on our position.</p>

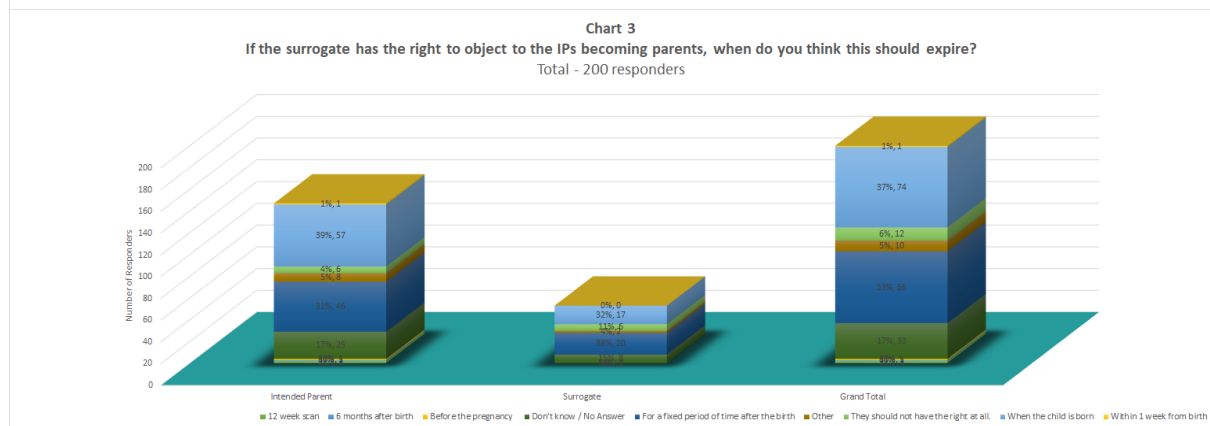
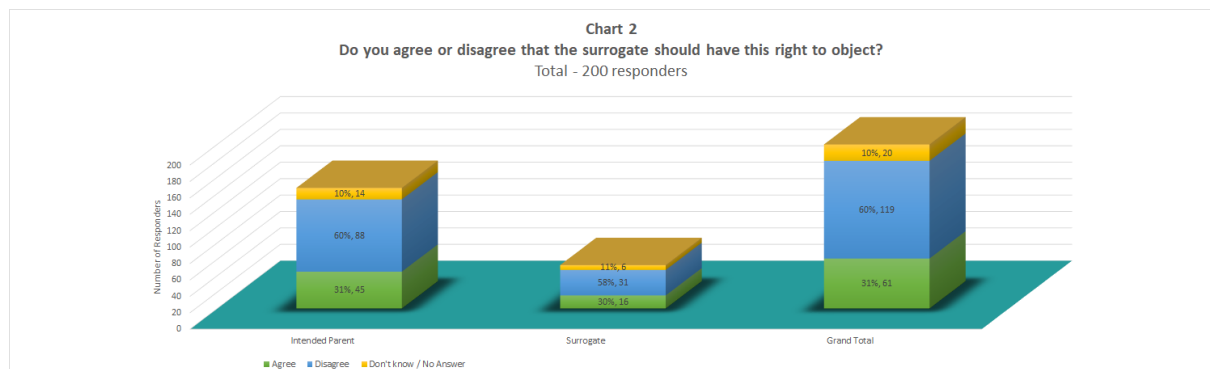
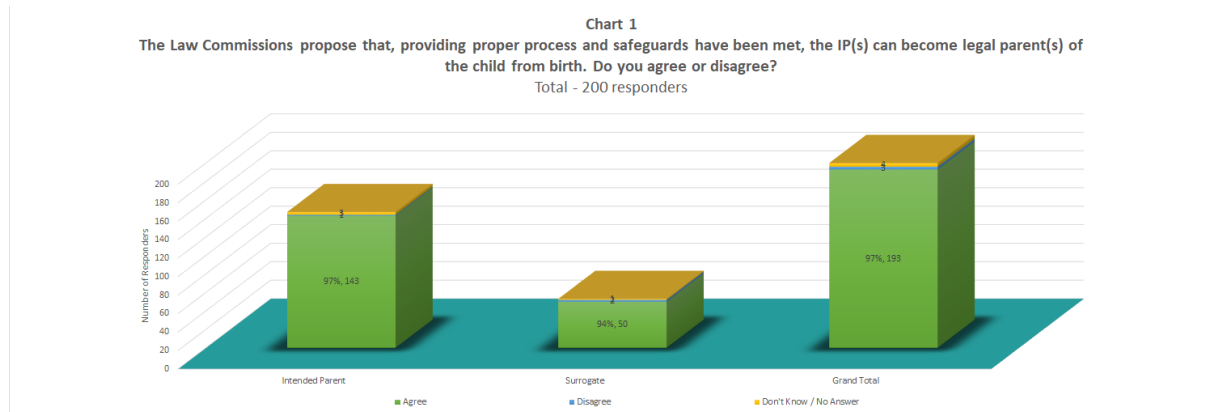
Section	Question	Response
5.93	<p>Consultation Question 118</p> <p>19.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.</p>	<p>19.157</p> <p>SurrogacyUK thinks that the proposals should specifically seek to minimise the potential for the UK to become a location for international surrogacy. There needs to be an holistic approach to this, which we think should include careful consideration of the eligibility criteria for domestic surrogacy arrangements, and not allowing enforceable contracts between surrogates and intended parents or organisations, and ensuring surrogates and organisations do not profit from domestic surrogacy arrangements.</p>

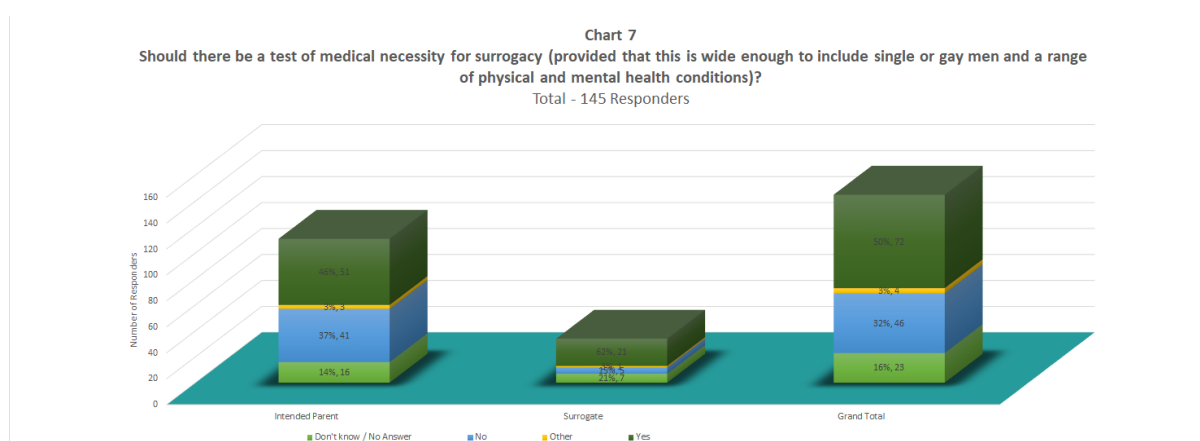
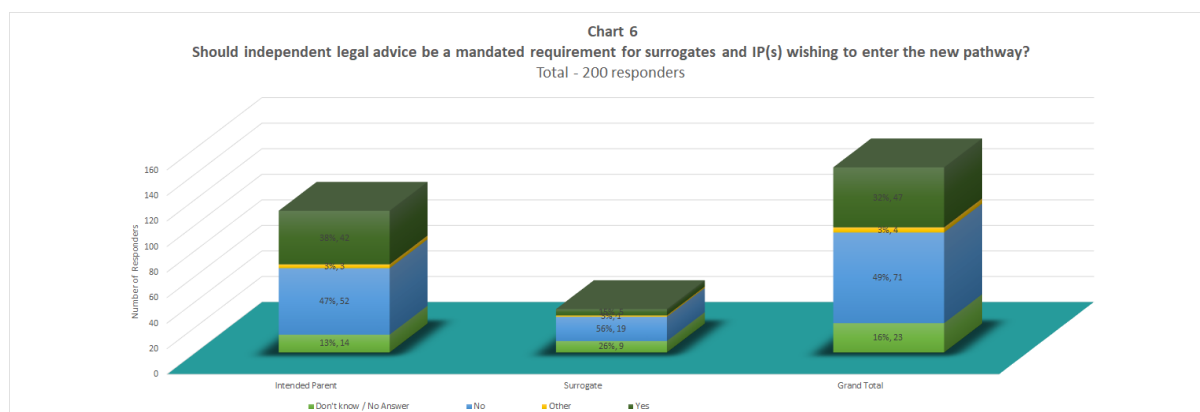
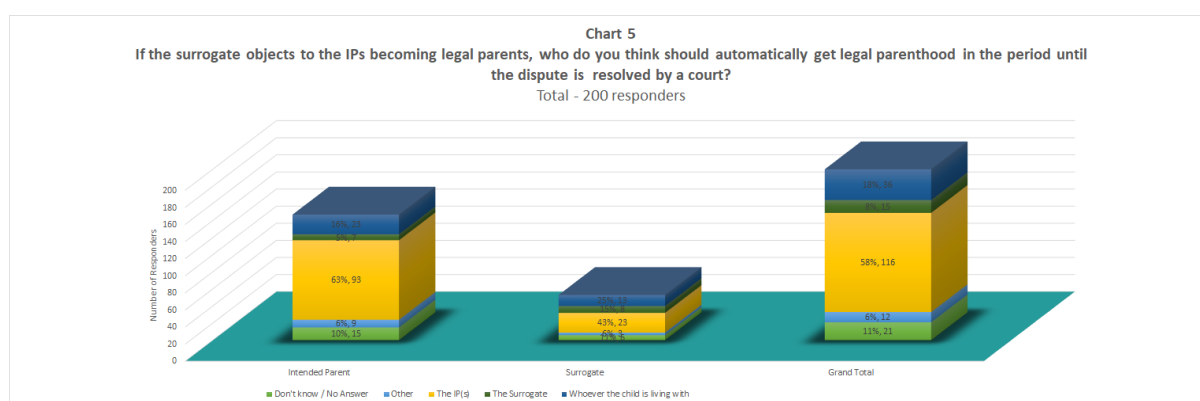
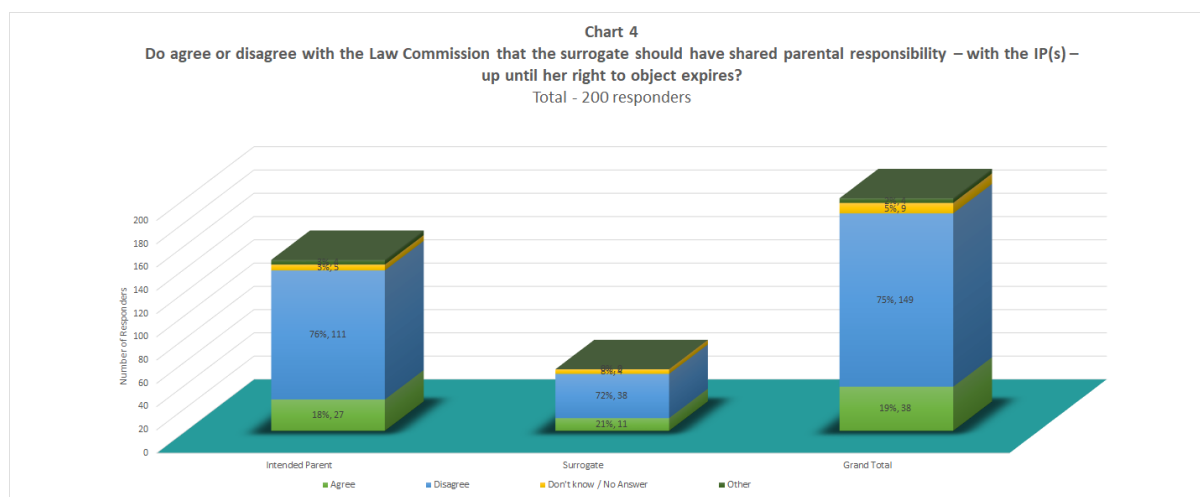
6. APPENDICES

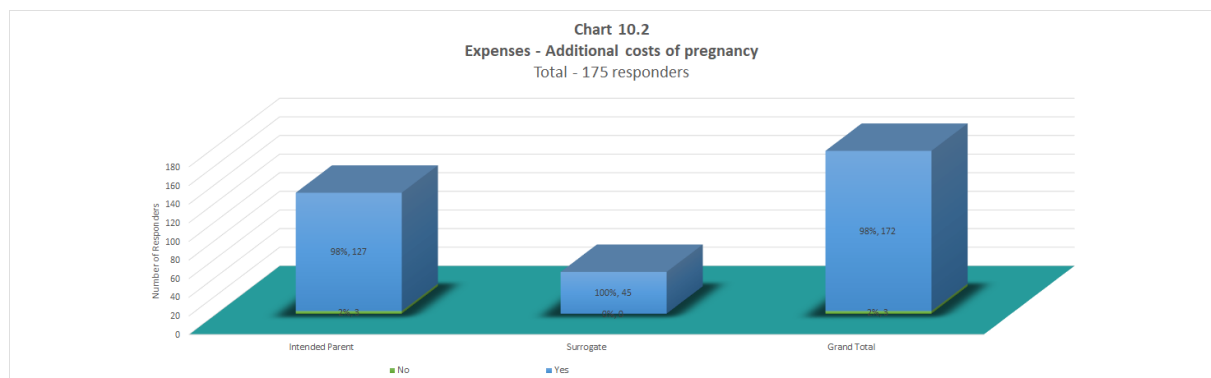
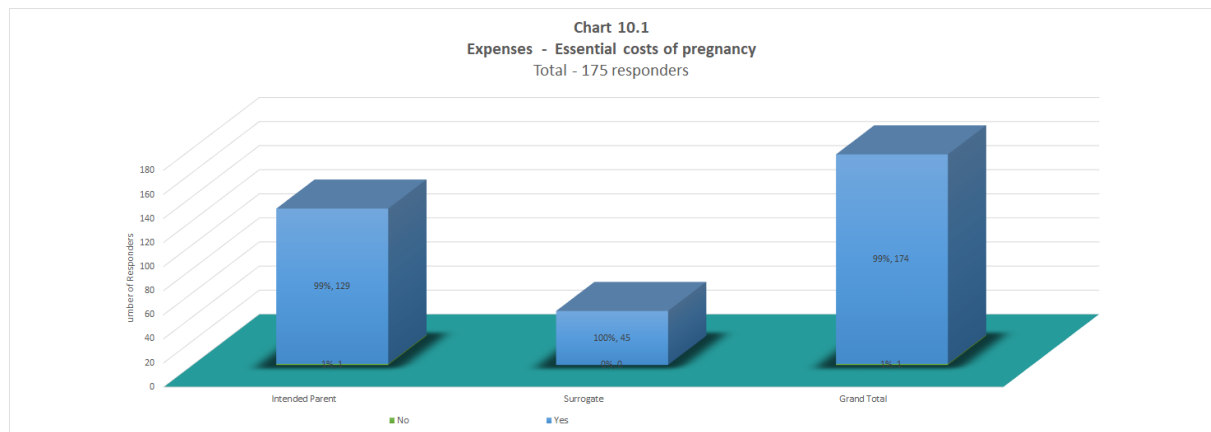
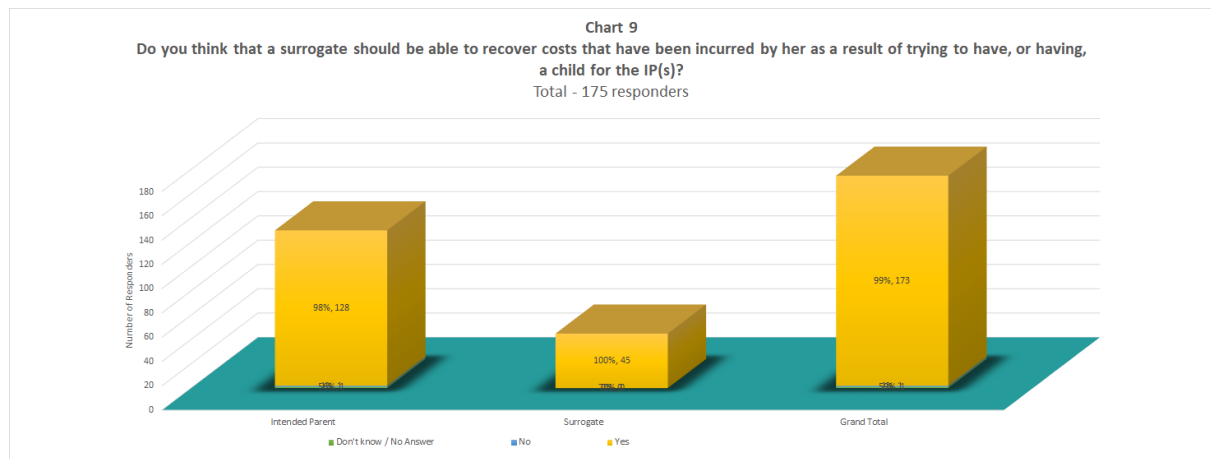
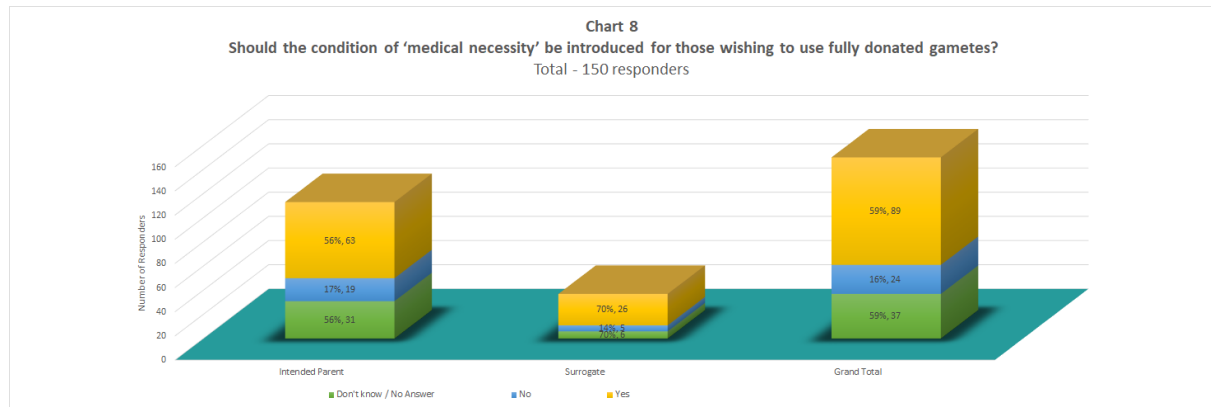
This section contains the data commissioned by SurrogacyUK to support our analysis of the Law Commissions' proposals.

Appendix 1: SurrogacyUK 2019 Survey

We asked people with lived experience of surrogacy for their opinions on the Law Commissions' most significant proposals. This was executed as an online survey, which was publicised on public social media as well as promoted to SurrogacyUK members by email. Responders were asked to state if they were a surrogate or intended parent. We received 72 responses from surrogates and 175 responses from intended parents.







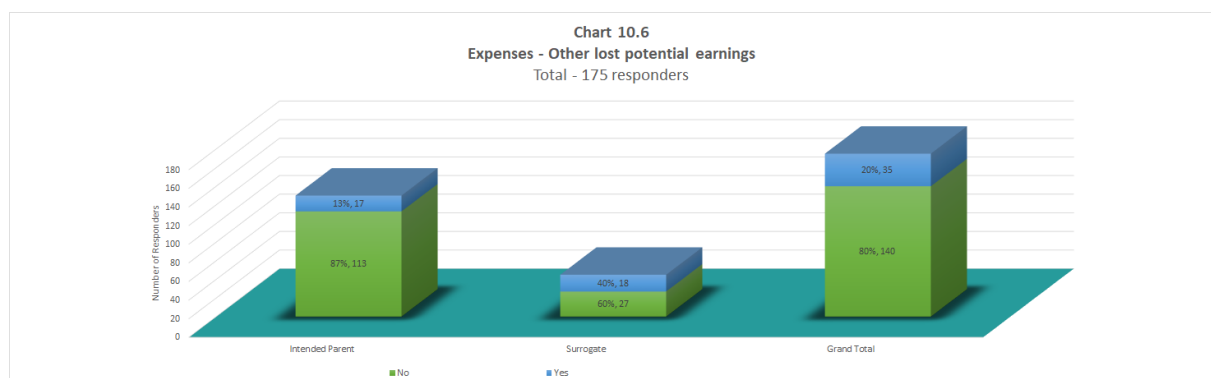
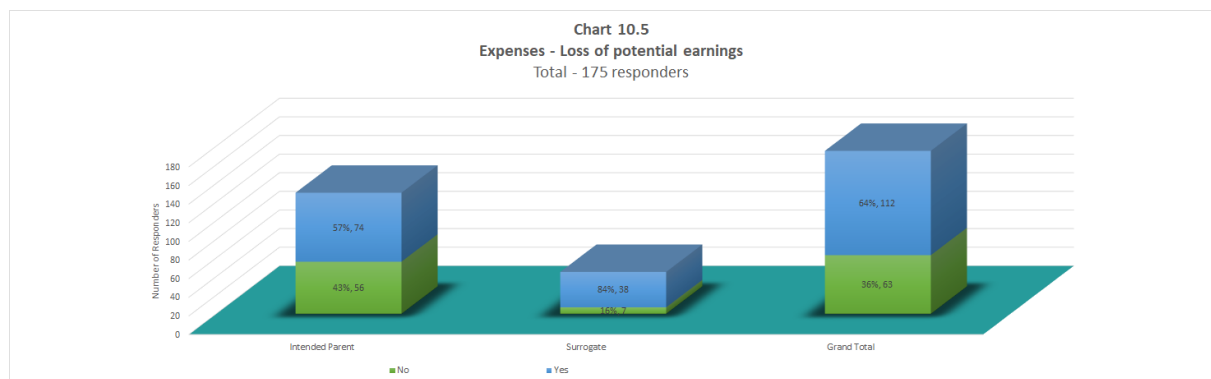
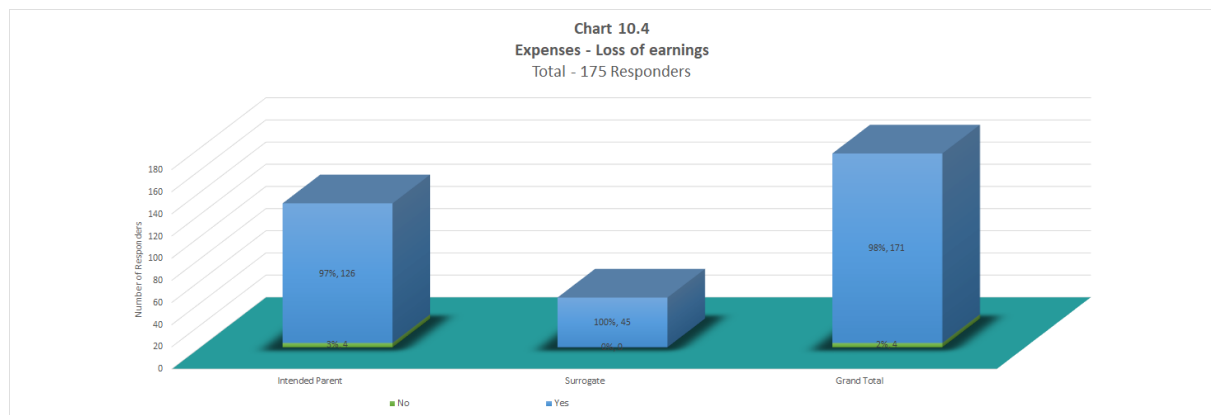
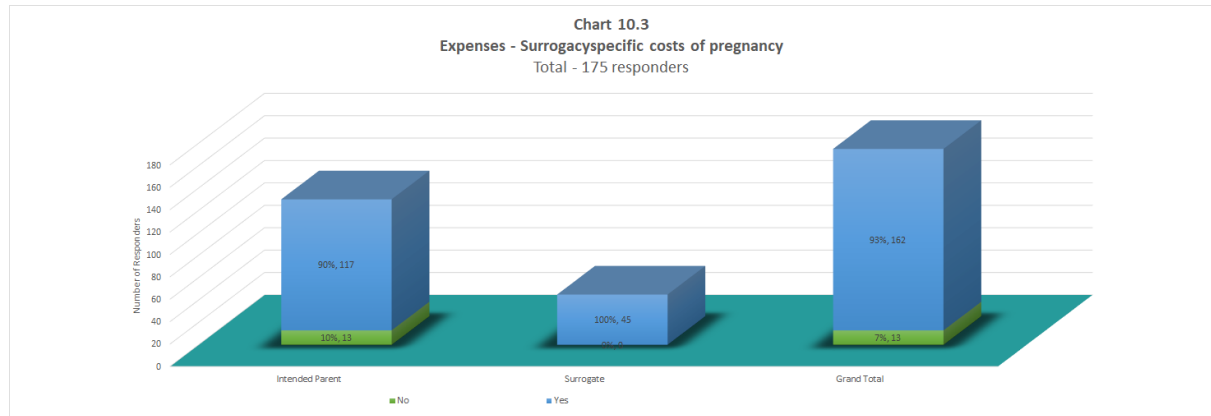


Chart 10.7
Expenses - Loss of welfare entitlement
Total - 175 responders

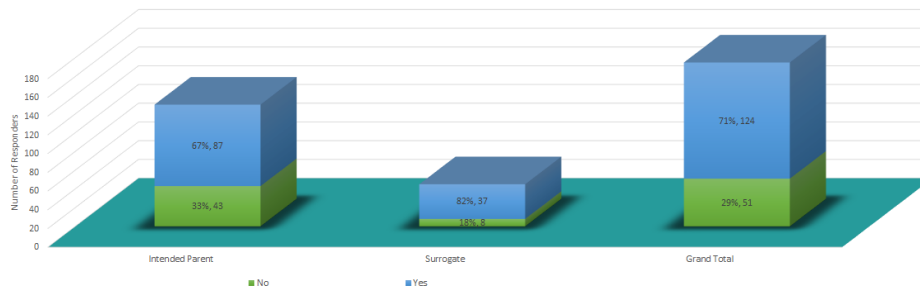


Chart 11
Do you think that surrogates should be able to receive a modest gift, or gifts, from the IP(s) as part of what is deemed acceptable payments
Total - 175 responders

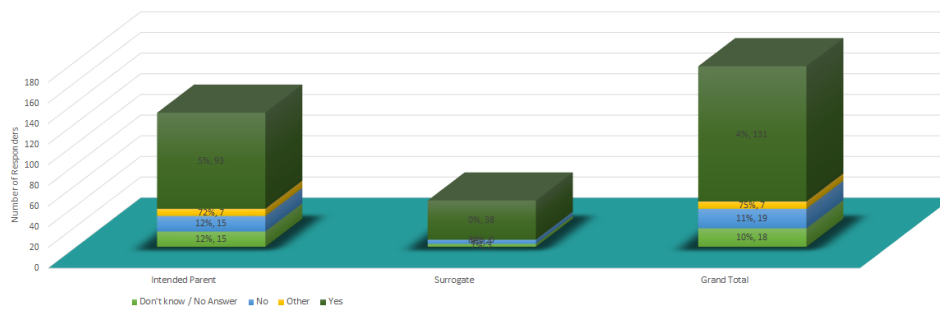


Chart 12
Do you think that surrogate should be able to receive a payment for the pain and inconvenience of being a surrogate?
Total - 175 responders

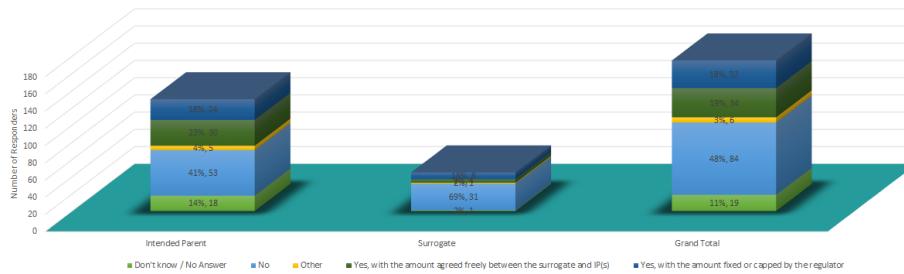
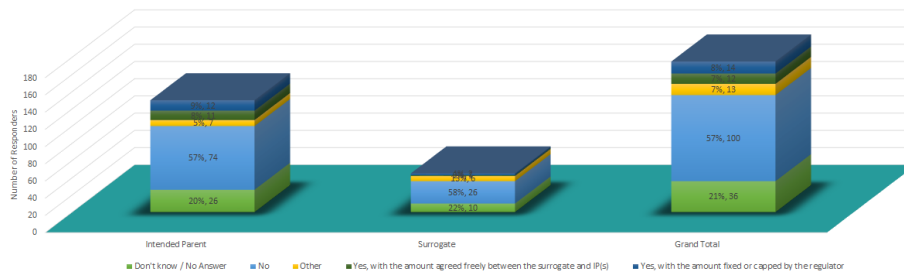
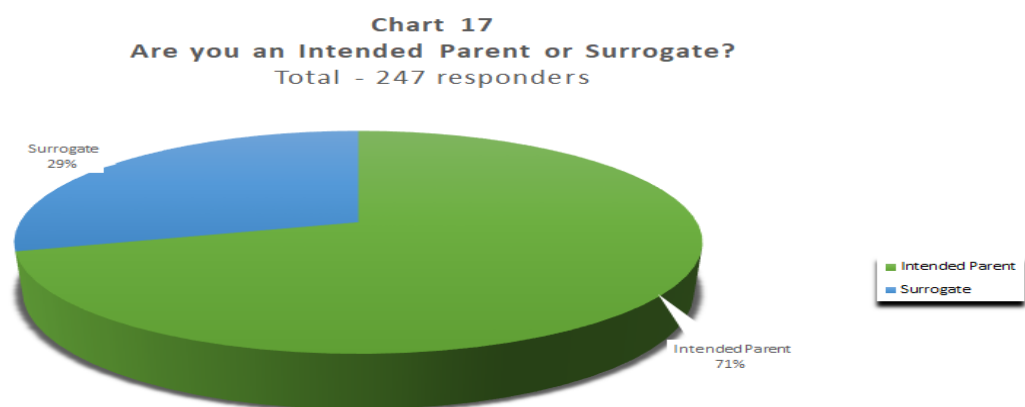
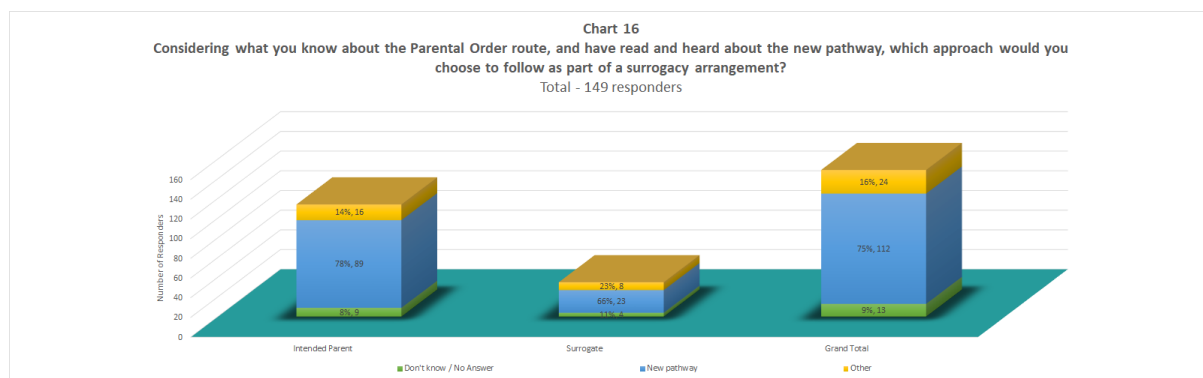
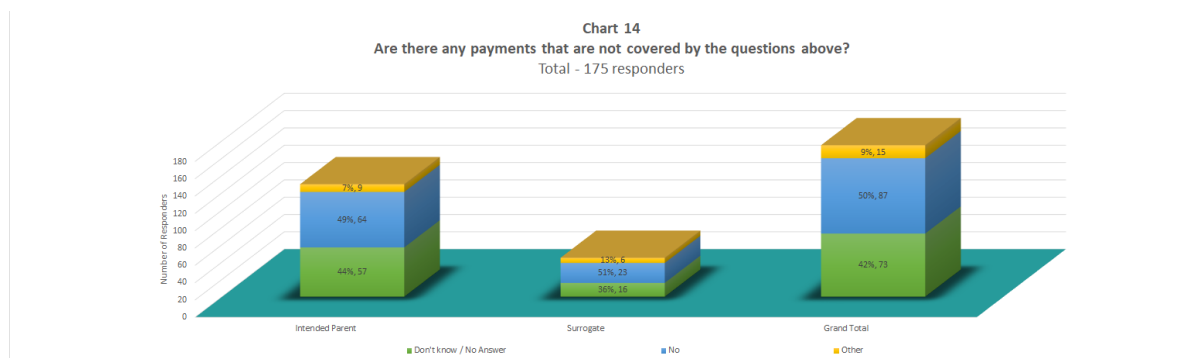
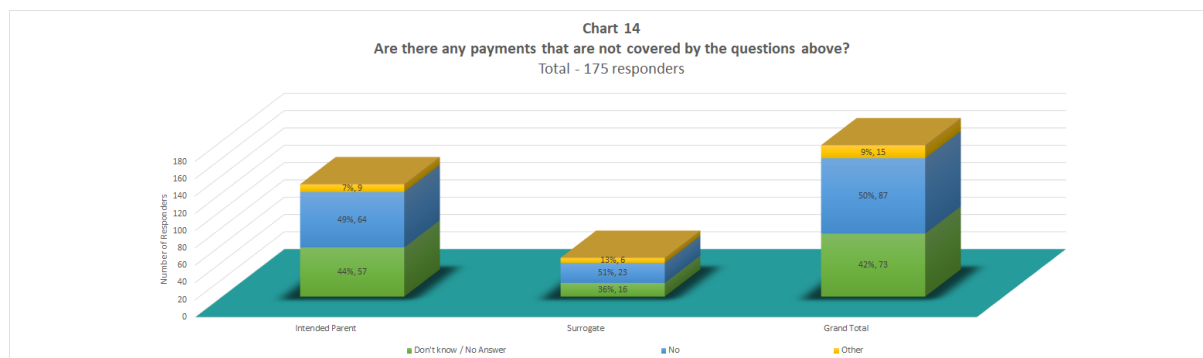


Chart 13
Do you think that a surrogate should be able to receive payment (on top of expenses) for her service of being a surrogate?
Total - 175 responders







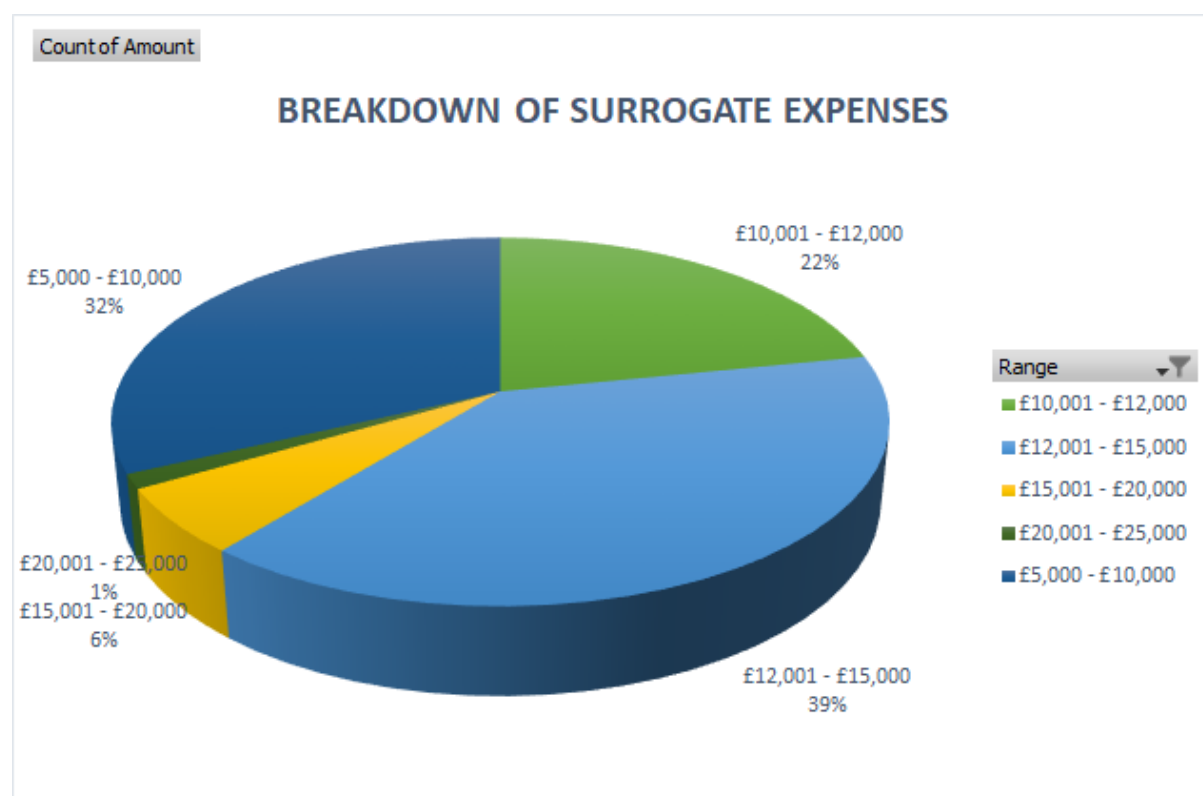
Appendix 2: SurrogacyUK Surrogate Jobs

We asked SurrogacyUK surrogates what jobs they do or did as a surrogate. We received the following 73 responses to our question. These are presented in the order they were received.

- Early Years Educator
- Nutritionist
- Unemployed
- Head of Learning Support, School
- Healthcare Assistant, Birth Centre
- Customs and International Trade Tax Specialist, UK Government
- Customer Service Advisor, Energy Company
- Social Worker
- Retention & Student Support Officer, University
- Diabetes Retinopathy Screener
- Emergency Nurse Practitioner and Manager
- Healthcare Administrator
- Author
- PhD Student
- CEO, Social Enterprise
- Care Team Leader, Specialist Dementia Residential Care
- Student Social Worker
- Area Manager
- Accountant
- Director of Finance and Analytics, Management Consultancy
- Owner, weight-loss business
- Senior Account Executive
- Interpreter
- Student, Psychology & Disabled Counselling
- Emergency Medical Technician
- Senior Business Development Manager
- Duty Manager and Bus Driver
- Senior Data Analyst, Banking Sector
- Care Practitioner
- Student Nurse
- Childminder
- Retail Supervisor
- Microbiologist
- Bookkeeper
- Retail Manager
- Personal Trainer
- Degree Student, Biology
- Front of House Assistant
- Specialist Clinical Pharmacist
- Stay-at-home Mum
- Accounts Manager
- Senior Retail Manager
- Foster Carer
- Business Owner, Childminding
- Software Engineer
- Head of Accounts
- Degree Student
- Waking Night Support Worker, Complex Care
- Supported Housing Officer, Housing Association
- Care Support Worker, Adults with Challenging Behaviour
- Teacher
- Events Manager
- Logistics Coordinator, Aerospace Company
- Insurance Advisor
- Paediatric Nurse
- Charity Worker
- Transcriber, Television Productions
- Deputy Manager, Supermarket
- Midwife
- Teacher
- Primary School Teacher
- Midwife
- HR Manager
- Maternity Nurse, Newborn Care
- Antenatal Teacher
- Owner, Wellness Centre
- Administrator
- Teaching Assistant, Primary School
- Qualified Pharmacy Dispenser
- Solicitor
- Office Manager
- Debt Advisor
- Community Nurse

Appendix 3: SurrogacyUK Surrogate Estimated Expenses

SurrogacyUK asks our surrogates to create an estimate of what their costs are likely to be before they become “active” (i.e. look for intended parents). This process encourages them to think about their own life situation, what will be affected, and what needs they will have in a surrogacy arrangement. We provide a simple tool that helps them model their costs, hence the rounding of numbers. A surrogate’s actual costs will obviously vary from the estimate as the intended parents’ requests (e.g. clinic location) and the reality of the surrogacy arrangement unfolds. We think it’s nevertheless a good proxy for the range and amounts reimbursed to our surrogates. Note: we have recorded this data since 2017 and these are the amounts entered at the time of becoming active, so they haven’t been adjusted for inflation.



Expenses Value	Frequency	Percentage	Cumulative percentage
£ 6,000.00	4	2.56%	2.56%
£ 6,200.00	1	0.64%	3.21%
£ 6,500.00	1	0.64%	3.85%
£ 7,000.00	2	1.28%	5.13%
£ 7,300.00	1	0.64%	5.77%
£ 7,500.00	3	1.92%	7.69%
£ 8,000.00	2	1.28%	8.97%
£ 8,200.00	2	1.28%	10.26%
£ 8,300.00	1	0.64%	10.90%
£ 8,400.00	1	0.64%	11.54%
£ 8,500.00	4	2.56%	14.10%
£ 9,000.00	3	1.92%	16.03%
£ 9,100.00	1	0.64%	16.67%
£ 9,500.00	1	0.64%	17.31%
£ 9,600.00	1	0.64%	17.95%
£ 9,700.00	2	1.28%	19.23%
£ 9,800.00	1	0.64%	19.87%
£ 10,000.00	19	12.18%	32.05%
£ 10,100.00	1	0.64%	32.69%
£ 10,300.00	1	0.64%	33.33%
£ 10,400.00	1	0.64%	33.97%
£ 10,500.00	2	1.28%	35.26%
£ 10,600.00	2	1.28%	36.54%
£ 10,800.00	1	0.64%	37.18%
£ 11,000.00	2	1.28%	38.46%
£ 11,100.00	1	0.64%	39.10%
£ 11,200.00	1	0.64%	39.74%
£ 11,300.00	2	1.28%	41.03%
£ 11,400.00	2	1.28%	42.31%
£ 11,500.00	4	2.56%	44.87%
£ 11,600.00	1	0.64%	45.51%
£ 11,800.00	2	1.28%	46.79%
£ 12,000.00	11	7.05%	53.85%
£ 12,100.00	2	1.28%	55.13%
£ 12,150.00	1	0.64%	55.77%
£ 12,200.00	3	1.92%	57.69%
£ 12,400.00	1	0.64%	58.33%
£ 12,500.00	5	3.21%	61.54%
£ 12,600.00	1	0.64%	62.18%
£ 12,800.00	1	0.64%	62.82%
£ 12,900.00	1	0.64%	63.46%
£ 13,000.00	9	5.77%	69.23%
£ 13,100.00	1	0.64%	69.87%
£ 13,500.00	4	2.56%	72.44%
£ 13,600.00	4	2.56%	75.00%
£ 14,000.00	7	4.49%	79.49%
£ 14,100.00	2	1.28%	80.77%
£ 14,200.00	1	0.64%	81.41%
£ 14,300.00	1	0.64%	82.05%
£ 14,500.00	3	1.92%	83.97%
£ 14,700.00	2	1.28%	85.26%
£ 15,000.00	12	7.69%	92.95%
£ 15,300.00	1	0.64%	93.59%
£ 15,500.00	1	0.64%	94.23%
£ 15,600.00	1	0.64%	94.87%
£ 16,000.00	4	2.56%	97.44%
£ 16,700.00	1	0.64%	98.08%
£ 18,000.00	1	0.64%	98.72%
£ 21,000.00	1	0.64%	99.36%
£ 23,000.00	1	0.64%	100.00%
Grand Total	156	100.00%	

Appendix 4: Employment Issues in Surrogacy

We surveyed SurrogacyUK surrogates and SurrogacyUK and intended parents from both SurrogacyUK and elsewhere about employment issues to support our response to the questions asked by the Law Commissions on this matter. We received 40 responses from surrogates and 110 responses from intended parents. Our responses to the questions asked by the Law Commissions can be found in Sections 5.85 to 5.89 of this document.

SECTION 5.85 / Question 10: 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.

As the consultation document indicates at 7.12 due to the additional criteria that apply to paternity leave to care for the child, surrogate's partners are not usually granted paternity leave nor does SurrogacyUK recommend they attempt to apply for this. The cost of surrogate partners taking unpaid time off work is usually covered as part of a surrogate's expenses.

Surrogate's experiences were mixed in terms of the ability to take time off, the majority had found that employers did offer some flexibility for their partners to take unpaid leave however some found that it was difficult for this to be arranged. In particular this has been an issue where the surrogate partner works in an industry with fixed periods for leave such as teachers and shift workers.

All surrogates think should be a provision for leave for surrogate's partners. There was a division between whether this should be paid or unpaid. Many surrogates felt that unpaid leave would be acceptable with the proviso that loss of earnings for partners can be covered by the expenses a surrogate can claim.

The majority would expect their partner to take time off after the birth to support them and include this in existing expenses. Surrogates feel that having this support is essential to support their recovery post birth, and in many cases to provide care to their own children, ensuring they are not adversely affected by the surrogacy experience.

In practice there are mixed responses from employers regarding flexibility to allow time off from work and the notice required as this is a grey area and not covered by the current paternity leave requirements.

Surrogates feel strongly that the terminology of 'paternity' leave and pay is not appropriate to a surrogacy situation and the leave should be called surrogate partner leave or another similar name. It has been indicated that it could be seen as taking something away from the parent through surrogacy by a surrogate's partner being able to take this type of leave.

In terms of the timescales, most surrogates indicated that up to two weeks would usually be sufficient however in the case of a caesarean section or complicated birth longer may be required.

Under the new pathway should the proposed requirements of counselling and STI screening before conception be made mandatory for surrogates' partners these

appointments would increase the amount of time of work required by a surrogate's partner. At present there is no requirement for a surrogate's partner to attend these appointments in a traditional (straight) surrogacy arrangement and in the case of gestational (host) surrogacy individual clinics have differing practices in relation to the requirement (or not) for a surrogate's partner to be STI screened or attend counselling. Should the new pathway require partner attendance at such appointments it is recommended that an allowance for surrogate partners to be able to take leave to cover these appointments be included in the legislation.

Evidence from Surrogacy UK surrogates:

My husband's employer has been supportive in that they have allowed for him to take time off (unpaid) for scans and he can take unpaid leave after the baby is born to help me with our kids. I think they should definitely be entitled to some kind of paid leave

I think a week would be a good compromise- my hubby has never come to a scan unless it fell when he was already on a day off or I needed him there, his employers have always allowed him to do short notice unpaid leave.

My husband has taken around a week off after the birth as unpaid leave and this has always been fine where he works. Even though it's a small team and it means him ringing in the day I've gone into labour or the day after to say I've had the baby so he's taking his week now, they've always been great and let him do this.

I don't think paternity leave for surrogacy should be picked up by taxpayers but it should be included in expenses

It would be helpful to have been able to take some unpaid leave. But always difficult when you are self employed and you have to take the work when it's available.

My partner wasn't able to take leave after the birth as he works shifts so was unable to get time off, I would have liked to have his support.

I don't think it's right to bill it as 'paternity leave', but an entitlement for surrogate partners to have some unpaid leave to support their partners during and following birth (with costs to be met by IPs) seems reasonable. Not sure if it's a week or longer, maybe longer in case of c section etc?

I think language is very important - it should be paternity leave but surrogate partner entitlement

Paternity leave doesn't feel right. Feels like it's taking something away from the paternal parents right to leave, semantically.

Section 5.86 / Question 102: We provisionally propose that for 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?

SurrogacyUK welcomes this proposal and is in agreement that the current situation is inconsistent with the rights of other parents expecting a child.

A survey by SurrogacyUK of 110 intended parents indicated that 28% were self employed, this is significantly higher than UK averages of 15% across 2018 and 15.1% of total employment in the three months to June 2019, ONS.

Intended parents are often financially disadvantaged by surrogacy being their only route to parenthood and therefore to suffer a further disadvantage due to employment status is inherently unfair.

Anecdotal evidence indicates that some intended parents have actively chosen self-employment over employment following unsupportive practices and inflexibility during their own IVF treatment or surrogacy journey.

As self employed people are unable to claim statutory adoption pay, parents through surrogacy are treated differently due to employment rights being aligned to adoption leave.

We agree that limiting this to allow one parent through surrogacy would be consistent with parents through other means of family building.

The terminology and language will need to be considered here as a same sex male (or non binary) couple may not be comfortable with the language of 'maternity allowance' and therefore suggest a revised definition such as 'parenting allowance' or 'surrogacy allowance' as an alternative which offers provision of an allowance which financially mirrors that of the current maternity allowance, allowing self-employed parents through surrogacy as well as those who have recently changed jobs (and would not qualify for statutory adoption pay) to claim.

Section 5.87 / Question 103: We invite consultees' views as to:

- (1) Where 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, antenatal appointment of any other reason; and**
- (2) If reform is needed suggestions on reform.**

Consideration should be given to allow additional paid or unpaid time off for appointments during a surrogacy journey. The standard provision of up to two antenatal appointments up to 6.5 hours is unlikely to cover the requirements of a surrogacy pregnancy due to the reasons outlined above and leave should be allowed for at least one of the intended parents to ensure that they are treated consistently with what they would be entitled to where they are able to carry themselves.

Section 5.87(1) / Question 103(1)

Evidence from Surrogacy UK indicates that this is a key issue faced by intended parents, particularly in relation to the timing of when surrogacy leave can start. As the law stipulates that the leave can only commence from the day of birth intended parents have been concerned that they may miss the birth or be unprepared for their child's arrival due to not being able to commence their leave.

It is common in surrogacy relationships that there may be a distance between the surrogate and intended parents with IPs often moving close to the surrogate in order to be present for the birth. Being at the birth is a key opportunity for parents through

surrogacy to bond with their child and very important to the majority of surrogates. If intended parents work in roles where they are restricted in terms of taking holidays such as shift workers or teachers they risk missing the birth as they are unable to start their leave until their surrogate goes into labour.

In gestational (host) surrogacy arrangements it is common that a surrogate will have additional scans to check growth and appointments due to IVF and being under consultant-led care. The standard entitlement of two appointments will mean that unless the intended parents' employers offer additional flexibility or they are able to use holiday intended parents will miss key appointments.

The 'booking in' appointment with the midwife will require information from all involved in order to assess potential complications and gather information about the family the surrogate is carrying the baby for. Growth scans can be as often as every 2 - 3 weeks in the 2nd and 3rd trimester, an opportunity for intended parents to bond with their future child and be fully informed regarding development.

Treating both intended parents in the same way that legislation treats a pregnant person's partner creates an inequality in comparison with a situation where one of the parents were able to carry themselves. Decisions may need to be made and information provided regarding the development of the intended parents future child.

In addition to appointments an attendance at birth intended parents may wish to take time prior to the birth to establish a breastmilk supply. Inducing lactation requires very frequent expression and whilst there are steps employers can take to support intended parents whilst at work there may be cases where intended parents wish to start leave earlier in order to allow for this.

Section 5.87(2) / Question 103(2)

Aligning the provision of the ability to start leave with that of adoption in order to prepare for their child (**two weeks prior to placement / birth**) would seem appropriate.

Consideration should be given to allow additional paid or unpaid time off for appointments during a surrogacy journey. The standard provision of up to two antenatal appointments up to 6.5 hours is unlikely to cover the requirements of a surrogacy pregnancy due to the reasons outlined above and leave should be allowed for at least one of the intended parents to ensure that they are treated consistently with what they would be entitled to where they able to carry themselves.

Section 5.88 / Question 104: We invite consultee's 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.

The terminology in the existing legislation is unhelpful as this would not cover a woman inducing lactation (who is not a pregnant woman) or a surrogate expressing milk (who is not a nursing mother) following their return to work.

Reform to this legislation to cover the above situations would be welcomed. Many intended mothers will induce lactation and a number of surrogates provide breast milk to children they have given birth to via surrogacy on an ongoing basis. The expectation of a supportive employer may assist intended parents remaining at work until a later date or a surrogate returning to work at an earlier point and therefore it is in the interests of both employers and employees to take a supportive approach to providing facilities and rest to those expressing breastmilk.

Flexibility in this area provides an opportunity for babies born through surrogacy to receive breastmilk and benefit from the health advantages that breastmilk can provide.

Section 5.89 / 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.

Awareness

The main issue encountered by both surrogates and intended parents is a lack of awareness of employers about surrogacy and how this operates with the UK. Organisations such as ACAS, CIPD, employers associations such as NHS employers, UCEA, LGA and trade unions could help ensure that employers, employees and HR professionals are aware of surrogacy and the employment rights of intended parents and surrogates. At present it is unusual for employers to have a policy in place that covers surrogacy as a form of family creation and as a result intended parents are often unclear of what support they will receive from employers in terms of leave and pay. Whilst it may not be feasible to insist all employers have a surrogacy policy, clear guidance should be available for employers and employees.

Notification and Documentation

Notification of pregnancy is an issue that has arisen for a number of intended parents. Surrogacy UK is aware of employers in several cases refusing to accept a copy of the surrogate's MATB1 and asking for a witnessed statutory declaration that the intended parents will apply for a parental order. This is a further additional cost to intended parents.

A common misconception documented in surrogacy policies is that the parental order must be *granted within six months of birth (or start of leave)* rather than the requirement that it is *applied for* within six months of the birth. SurrogacyUK is aware of cases where intended parents have been told that unless the employer receives evidence that a parental order has been granted within the six months they will be required to repay adoption pay.

Whilst the ACAS guidance is consistent with the law;

Parental orders to become the legal parent(s) of the child can be sought 6 weeks after the child is born, and before they are 6 months old.

Policies for surrogacy leave regularly misinterpret the guidance. Examples include:

University of [REDACTED]: *Where the baby is the subject of a Parental Order following a legal surrogacy arrangement, the University will provide surrogate parents with the*

equivalent entitlements as those which apply to adoptive parents. The University requires:

- *A copy of the MATB1 prior to the birth of the baby, and*
- ***A copy of the parental order no later than 6 months after the commencement of adoptive leave***

Imperial College: *Where, as an alternative to adoption, the baby is the subject of a Parental Order following a legal surrogacy arrangement, in addition to a copy of the MATB1 certificate issued to the surrogate, **you must also provide the College with a copy of the 'Parental Order' within 6 months of the baby's birth. The College retains the right to reclaim any payment made, and to be compensated for leave taken, if the member of staff fails to provide a copy of the 'Parental Order' within 6 months of Leave and Pay commencing.***

Source: https://www.imperial.ac.uk/media/imperial-college/administration-and-support-services/hr/public/procedures/family/familyfriendly-08/Adoption_Surrogacy-Policy.pdf

It is a source of concern to intended parents that they may need to repay adoption pay received if their parental order is not granted within the six month timescale.

SurrogacyUK recommends that that clear guidance is provided regarding the evidence intended parents must provide to employers under the new pathway to avoid any concerns that pay could be reclaimed by an employer. This could be submission of the birth certificate following the birth registration and opportunity for the surrogate to object. For cases which remain under the parental order route guidance should be clear that the intention to apply for a parental order should be sufficient rather than proof that the parental order is granted.

Response ID ANON-2V7F-YJAS-V

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-11 20:33:24

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

N/A

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

N/A

Chapter 6: The parental order procedure

8 Consultation Question 1:

No

Please provide your views below:

I personally think any Judge should be able to oversee these cases to make it quicker for everyone.

Please provide your views below:

Yes.

9 Consultation Question 2:

Please provide your views below:

I agree another level of the judiciary can hear it but only ones with relevant experience in these circumstances to make sure it's fair.

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:

Anything that makes it quicker and easier gets my vote.

11 Consultation Question 4:

Yes

Please provide your views below:

The intended parents should be given a chance to be on the birth certificate straight away as long as their paperwork is all correct detailing this.

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:

It should be an automatic procedure unless a case is made otherwise.

13 Consultation Question 6:

Please provide your views below:

The court should be able to make an interim judgement only if the case isn't clear in the legal agreement made before birth.

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

I wholeheartedly agree with this.

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:

No, if it was donated then it should be entered into the new pathway.

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:

The surrogates partner if not biologically related to the child should have no parental rights at all.

No

Please share your views below:

As above.

23 Consultation Question 16:

Yes

Please provide your views below:

To make grief easier to cope with things should be escalated where possible.

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:

No I disagree with this.

26 Consultation Question 19:

Yes

Please provide your views below:

Please provide your views below:

I agree with option 1.

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

The intended parents should automatically be put on the birth certificate extinguishing the surrogates rights at birth.

29 Consultation Question 22:

Please provide your views below:

Administrative where no argument but judicial where there is objections from surrogate.

30 Consultation Question 23:

Please provide your views below:

The child should be placed with the intended parents. The surrogate is only a host.

31 Consultation Question 24:

Please provide your views below:

Surrogacy should not be classed as adoption in any way where the intended parents are biological.

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:

Yes

Please provide your views below:

34 Consultation Question 27:

Yes

Please provide your views below:

Wholeheartedly.

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:

No restrictions on biological intended parents.

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:

N/A

39 Consultation Question 32:

Please provide your views below:

Yes

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:

They should be a parent.

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:

Geography.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Yes

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

Yes.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

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?

Yes

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

No

Please provide your views below:

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?

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:

Register a birth as an intended parent without surrogate.

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:

All of the above.

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

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 I think there should be a time restraint.

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:

Yes

65 Consultation Question 57:

Please provide your views below:

A single person can apply so a couple should be able to apply without time restraints.

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:

It is obvious that's the intention.

67 Consultation Question 59:

Yes

Please provide views below:

Please provide views below:

Yes

No

Please provide views below:

I don't think there should be any difference.

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Yes

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

No it's not necessary information.

Please provide your views below:

N/A

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

Yes

Yes

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

No.

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:

It should be the same as licensed practice.

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:

Only offences relating to domestic violence, pedophilia or mental illness related offences.

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.

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:

Yes essential costs like clothing, food, medicines but not household bills or broken fridges etc
There should be a list of what is essential.

82 Consultation Question 74:

Please provide your views below:

No I think parents shouldn't be allowed to pay other costs at all. There it becomes a money making scheme and one which factors on wealthy against working class.

83 Consultation Question 75:

Please provide your views below:

No as all costs are not relevant to the intended parents. In the UK there are no medical costs for pregnancy.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

No a surrogate is doing it as a gesture of goodwill not for payment.

85 Consultation Question 77:

Please provide your views below:

Neither.

86 Consultation Question 78:

Please provide your views below:

No payments means they should be entitled to benefits until surrogacy is complete.

87 Consultation Question 79:

Please provide your views below:

No, no and no. All part of pregnancy as aware by any woman.

Please provide your views below:

No.

Not Answered

Please provide your views below:

N/A

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

No.

89 Consultation Question 81:

Please provide your views below:

No again wealthy against working class.

90 Consultation Question 82:

Not Answered

Please provide your views below:

No as it is unfair on those unable to afford to do so.

Not Answered

Please provide your views below:

N/A

no other payments;

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Yes

to any miscarriage or termination; or

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Yes

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

No

Please provide your views below:

No

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:

No

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

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?

No

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:

Yes

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

There shouldn't be any paternity pay for surrogates partner or spouse

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:

Should be the same as any parents.

111 Consultation Question 103:

Please provide your views below:

Yes should be given a limited time before hand.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

Yes

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Intended parents should be immediately classed as the parent upon entry into hospital.

Please provide your views below:

Please provide your views below:

Intended mother/father is regarded as the parent, not the surrogate.

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?

[REDACTED]

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.

[REDACTED]

[REDACTED]

[REDACTED]

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

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. Ideally, all international surrogacy agreements should be ended due to these risks.

- (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. Due to the inevitable effects of poverty and economic coercion among countries where it is legal these risks are heightened, in addition to the risk for domestic abuse.

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>

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 is akin to the sale of the child.

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.

No records should be kept because this should not be legal. Women's bodies should not be for rent, either domestically or internationally.

- 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'. This "pathway" presents a profound opportunity for the exploitation, dehumanisation and abuse of women and will particularly affect the most vulnerable in society such as the economically disadvantaged. It makes way for multiple human rights abuses to increase and become normalised and incentivised in addition to providing an increased incentive for human trafficking/ slavery. 40.3 million people are currently enslaved around the world and I have serious concerns that this will exacerbate the problem.

Source: <https://www.antislavery.org/slavery-today/modern-slavery/>

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. Any changes should be determined by a combination of the birth mothers wishes and what is deemed to be in the child's best interests.

- 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.

In this, the birth mother should remain the legal mother and this should only change in cases where there is evidence that the child is at serious risk of harm which would also warrant removal of a genetic child in the absence of any surrogacy agreement. Children should not be for sale.

* <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. Inevitably their best interests would be cast aside in the name of profit and cost reduction. This is absolutely unacceptable.

There is no human right to have another woman carry your child.

- (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 resulting in a jail sentence. Given the parallels to prostitution this is also particularly concerning and raises similar ethical concerns to those who run brothels.

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, prostituting themselves for money we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I strongly wish to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts. To do otherwise is to be explicit in human exploitation.

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. Currently 14 million people live in poverty in the UK, including 4 million children whose mothers would be most at risk from this law. To exploit their desperation for the personal benefit of the wealthy is nothing short of despicable; especially when alternative methods of poverty relief pursued by the government are clearly woefully inadequate. Having a mother who acts as a surrogate can also provide significant problems for

the children in later life (source <https://ifstudies.org/blog/the-overlooked-risks-of-surrogacy-for-women>)

I would like to see a total ban on surrogacy in the UK, as there is 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 so strongly 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. Particularly because there is a large risk that these gifts could be taken to be in lieu of payment, implicitly contravening any ban on paid surrogacy

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. It also highlights of the potential problems in these arrangements which would severely jeopardise the wellbeing of all those involved and intersect with other serious medical and ethical questions. This is a quagmire that should not be waded into.

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 and the dehumanisation of the women involved to nothing more than her reproductive capacity.

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 and has a vested interest in the judge approving their arrangements.

* <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 and a violation of her autonomy.

Womens bodies should not be for sale. It is abhorrent that the state is even considering sanctioning this.

It also provides a financial incentive for other parties involve to construe that the woman has broken the agreement, regardless of the truth of the matter. As the women are likely to live in poverty she is likely to have little recourse to fight these allegations, deepening the exploitative nature of these hypothetical agreements.

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. The payment of the surrogate should also be considered coercion.

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 which does a grave disservice to all involved. The impact of watching their mother give birth to another child and subsequently not bring that baby home on the surrogates other children has also not been assessed or accounted for.

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. Those who are intending to purchase the child should not be considered in the care of either the surrogate or the infant during both pregnancy and delivery, nor should they have the ability to prevent the surrogate from getting the healthcare that she chooses.

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.

The impact upon those who are attempting to purchase a child should not be taken into consideration. The welfare of the birth mother and the child should be absolutely paramount

Having a child is not a medical necessity, it is not an entitlement and life can go on without it as it has done for millennia.

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. Our interests and concerns appear to, once more, be secondary to those who wish to use our bodies for their own gain.

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. The impact upon the long term physical, mental, emotional and social health of the surrogates appears to have been completely overlooked in favour of those with more status, wealth and power.

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. I am not a product to be brought and sold like mere cattle.

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.* Nobody has a human right to the use of another's body and to contravene this principle has severe implications for women's rights as a broader issue and principle. Particularly affected are the right to an abortion, refusal of medical care and the right to refuse sexual services regardless of whether the potential sexual partner is a customer or a husband. I must point out that marital rape was only made illegal in 1991, not long before my birth, and that it is not viewed as a crime by up to a quarter of the adult population. In light of recent efforts to push back against women's rights in Alabama and Georgia it would be naïve to suggest that these rights are ironclad. Of particular concern with regards to this principle is the suggestion that any potential benefits to the women could be withheld should she make certain lifestyle decisions during pregnancy. These rights were hard fought for and hard won. Don't roll them back. Source: <https://www.theweek.co.uk/98330/when-did-marital-rape-become-a-crime>

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, which appear to be the governments last priority with regards to this consultation. 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

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-12 13:00:59

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Other

Please provide your views below:

Personally attending the High court was an intimidating experience , and the fact that we had to travel to London and then across London with young Twins was in itself a challenge. Our anxiety levels were very high, and if it was at all possible to have done this in a more local setting it would have made the experience less daunting. However the Judge and court staff we met were very welcoming and although naturally a legal issue and very serious, they went out of their way to make us welcome and relieve some of our anxiety.

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:

We were given expert advice in advance of our court date that allowed us to be as prepared as possible, this meant we had all of the correct evidence and documentation arranged in an easy to follow and clear way for the Judge. The court day as i have already mentioned was an added source of anxiety with our young twins, not just for us but our entire families. The thought that we would have had to attend twice and go through it further, extending this unease would have been very difficult. The advice we received allowed us to gain our parental order on our first court appearance, however i believe we were the only couple that day of many who achieved this, many requiring a second appearance in future. However the advice we received naturally cost us time and money with our legal advisor, and naturally increased an already hefty bill. If it was made clear in advance what information and paperwork would be required, how it was to be presented and to who, then a lot of time both for the intended parents, but also the court and legal staff could be reduced.

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:

Of course as much as i 100% agree that the improvement in parental status of the intended parents to birth would be a big leap forward to the current law, i dont think this goes far enough. In California where our twins were born , we became the legal parents in advance of birth. What this gives you is the legal responsibility for your child pre birth and allows you a say in any medical decisions that could need to be made, this is hugely important if there are any issues with the pregnancy , and you are able to be consulted on treatment and care of your baby pre birth. If the surrogacy arrangement has been legally arranged and everyone has entered into the agreement for the right reasons, and with the right screening and support and counseling then there should be no reason why this would be an issue. Surely at the point the surrogate enters into a surrogacy agreement and takes part in the insemination or IVF procedure they have already agreed to the legality of the IP's being the legal parents, so bringing this legally forward should offer no issue, unless they have any intention of changing their mind, which these new legal protections and the suggestion of the court to give the family court the right to over rule the birth mother would back up. This is a very clear distinction here, Its not as has been in the past the issue where unmarried mothers were forced to put their children up for adoption as has been seen in Ireland etc, and their children being taken away from them, This is a very clear upfront and well managed situation whereby everyone should enter into the process in agreement right from the start that any child successfully conceived is for the intended parents, anything other than this should have been discovered during the pre screening and counselling stages. If they get to the point where the surrogacy proceeds the birth mother should be under no doubt that any child or children belong to the intended parents and it should not be an issue.

15 Consultation Question 8:

Yes

Please provide your views below:

Another period

Please provide your views below:

I dont have a specific view on how long records should be kept, but similar to adoption i would believe it would be important for any child born through surrogacy to be able to trace and view any data that related to their conception and birth.

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 dont have a final opinion on this at this stage, i would however expect this to make things slightly more complicated , and also for the children this would im assuming remove the right to them being able to trace their parentage fully, which could cause them issues when already having understood their conception was from a surrogacy agreement. for example our twins know that both of their daddies wanted them so badly that we had the help of an egg donor lady and a tummy lady who carried them for us. We are in contact with both of them, which is a relationship i personally cultivate for the twins benefit in future should they want contact in any form. I want the twins to grow up with surrogacy and their conception having the smallest impact to

them as is humanly possible and that they are supported and fully understand the process to reduce any possible confusion or miss understanding. Having two parents and knowing the two ladies who helped us in their journey i hope will make this possible. My only concern would be if any anonymous part would add a layer of complication and confusion for the child, and how this was managed in what is already a non traditional route to birth.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

Same response as above

18 Consultation Question 11:

No

Please provide your views below:

As before, i believe the issue of legal parentage should be agreed legally in advance of the birth as is the case in California. The surrogate should know in advance of entering into the agreement and prior to IVF treatment etc that she is not to be the legal parent and the parents are the people she has entered into the agreement and whole process with. I dont understand what is achieved by giving the surrogate the right to change her mind or reject the intended parents in a professional legal surrogacy agreement?, The only thing this serves to do is cause risk , upset and heartache to the intended parents, and will continue to force couples to use overseas organisations in countries and states that offer full legal protections to intended parents. By allowing the surrogate to change her mind or stop the legal rights being given to intended parents opens the whole process up to abuse by surrogates who have no intention of giving the child to the correct parents, or the option to extort funds etc to give consent.

19 Consultation Question 12:

No

Please provide your views below:

If the intended parents are not going to be granted legal parentage pre birth then if the surrogate refuses to allow the IP's to have legal parentage then the family court should step in as has been suggested and overrule the surrogate , which was one of the options presented, once again i fall back on the surrogacy arrangement and the pre screening and legality, If you enter into a surrogacy arrangement you do not have the option to keep the child. There are so many ways in which a woman can have a child of their own if they are physically able to. They do not need to enter into a surrogacy arrangement and then have the option to keep the child. This is not what a surrogacy arrangement is meant for. So at no point should the surrogate have the option to keep the children. Even if the IP's die pre birth, its likely that their families have already invested hugely in the children emotionally and they should take responsibility if they wish to do so.

20 Consultation Question 13:

Other

Please provide your views below:

I agree in principle to the process as there must be a process, but i do feel this is just overly complicating the process once more.

As part of a legal surrogacy arrangement, The surrogate should have to give consent and agree that they have entered into the process voluntarily and without any coercion, which should be backed up by their surrogacy agency , and with agreements by the councilors or healthcare professionals who have screened her.

This should be before starting the process , not after. The option to withdraw or refuse to provide consent serves no one in the process apart from any surrogate who has entered into the process for the wrong reasons or without full understanding of what they are agreeing to.

21 Consultation Question 14:

Not Answered

Please provide your views below:

22 Consultation Question 15:

No

Please provide your views below:

What purpose does this serve? If you are a civil partner or spouse and part of the surrogacy process and agreement, how does cutting this person legally out help anyone? And what implications does this have for the IP's .

in our case we are both biologically related to our twins, One each, so how would this be decided if the surrogate decided to refuse consent and one IP

was automatically refused parentage.

This serves no one and will leave a legal grey area

Yes

Please share your views below:

As above, it serves no one to refuse one parent the legal parentage, and in the case of multi births and different biological fathers there must be this added protection

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:

My view already is that parentage of the unborn child should be established in advance of birth at an agreed point in the pregnancy, and this would then depend on when death occurred, if prior to the agreed point, then yes

26 Consultation Question 19:

Yes

Please provide your views below:

Please provide your views below:

option 1, as i believe families of IP's have a huge vested interest already in the unborn child as with traditional routes to pregnancy and should be given the option to request parentage.

If the surrogacy arrangement has been correctly entered into then the surrogate should not want parentage anyway surely?

27 Consultation Question 20:

Other

Please provide your views below:

This is outside of my personal experience , if you enter the arrangement as a couple ie civil partnership or married then i dont understand why only one would want to be registered as the parent, the only situation i would guess this relates to is a breakdown of the relationship and only one IP being biologically related to the child , in this instance then if the other original IP is in agreement then at this point i would think ethically it would work, but otherwise this would worry me that an individual could have their IP rights removed.

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

The only part that i view this being of any use to anyone is legally when it comes to medical issues. From the Surrogate point of view, they would naturally want to ensure their safety and health and if anything in the pregnancy could cause them to be at risk they would want to secure their safety as paramount, for the IP's the focus would be on the unborn baby's health and safety, for the surrogate and any spouse it would be for the Surrogate, so there would need to be clear legal understanding here .

29 Consultation Question 22:

Please provide your views below:

As before i believe this should be agreed in advance of birth, but our experience in America allowed us to be entered as both parents on the birth certificate in the hospital , so leaving the hospital with our twins we had birth certs with both our names on, which made applying for passports etc much easier, and therefore i would class this both as administrative from that point of view, but without the law in place that would not have been possible.

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:

We had nearly a year where we were in a legal grey area in the event of any medical emergency under UK Law, although the sole carers and in America legally parents, under UK law until we achieved the court order under UK Law our Surrogate in America who had already given consent to us was classed as the parent. This caused me great anxiety personally.

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:

Not in any shape or form, if the agreement has been done correctly why would this be necessary.

36 Consultation Question 29:

Please provide your views below:

Yes, the surrogate and any spouse should have no legal responsibility , and if this is the only option legally currently then yes should be restricted, the IP's and the child should be protected especially by someone who doesn't live with them, and unlikely has any interests accept their own at heart.

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 worked with an agency in America . We had a pre meeting with the agency by skype, where we discussed every aspect of surrogacy and how it works, were able to ask questions and our agency asked questions of us. We were then given time to think about it and ask any further questions, at the point

we decided to proceed we had an evaluation on our suitability and our mental health etc, and when we passed that we were able to enter into the agreements stage where we retained the agency to source our egg donor and our surrogate based on many factors, and handle the introduction to our IVF clinic of which involved again skype consultations with our doctor and details of the requirements of our clinic, these involved full HIV and sexual health screening and providing the certifications to our IVF Clinic. A full fertility check with a clinic, which involved additional blood tests and sperm checks , we chose one in Harley street and the results given to our IVF Clinic which showed we were able to continue. Our agency suggested a law firm that they worked with and made the introductions and handled everything between the lawyers, the IVF clinic, our surrogate and our egg donor who we choose through reviewing many profiles and checking their medical history looking for anything that may not be a good match or could be a concern. At each step we were able to research each suggestion and organisation and had the option to select our own if we had wanted, although we were pleased to see that on every occasions they worked with either outstanding professionals in their field, for example our IVF Doctor is a specialist with extensive experience, everything was handled with care and attention and we felt fully supported. Our agency handled the introductions to our egg donor and surrogate and ensured they had the correct evaluations and screening and health checks and ensured they attended doctors appointments and kept us updated. I fully believe that having the agency support and a dedicated support working within the agency with vast experience and knowledge was invaluable to us and made the whole process much smoother.

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

100% agree with this, surrogacy involves many people and requires support and assistance from medical professionals, IVF clinics, screening, mental health, evaluation, donor sourcing , surrogate sourcing, pre during and after support. there are many legal procedures and much confusion, not to mention the costs which are astronomical. It can be a very distressing anxious time for IP's and having specific regulated organisations would help hugely , entering into surrogacy for the first time can be a minefield and if you kind of have to jump in with some blind faith, when you come out the other side you have an understanding and experience of what is required and how it works, but usually you have completed your journey and therefore this knowledge becomes lost. a regulated organisation would be able to remove much of the fear of what could go wrong with surrogacy and ensure that everyone involved is doing it for the right reasons and above board, It would remove the threat of the rogue surrogates and make it much easier and i would hope reduce the barriers to couples wanting a child via this route who currently feel its out of reach.

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:

Although i feel this is an enormous task given what i have experienced of surrogacy, i would think this was best suited to a panel or team of individuals all reporting to the person. As each area would require specialist treatment and experience and knowledge, my worry would be spreading one person to thinly.

Please provide your views below:

Please provide your views below:

Someone who has been through the process would be best placed to understand the demands, requirements and emotional toll this puts onto a couple and also what the surrogate and her family experience and the effects this has. This makes it difficult to have one person, as Its not just someone with a medical background and not just someone with a legal background.

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 understand the thinking behind this, the risk is if the organisations are not non profit then the lure of money can be given to surrogates which could lead to unsuitable people being selected in the pursuit of profit. However in the modern healthcare world of private practice and with the recruitment and training of staff and the provision of the service, an organisation needs to achieve a certain income to finance all of this and ensure its a success, its a difficult conversation, but as much as surrogates take part for the right reasons of wanting to help other families who cant have children, it cant be ignored that having a financial incentive would make it more attractive and i think most IP's are also in agreement they are happy to compensate surrogates for providing them with the most precious thing they love more than anything, naturally within reason. I look at it that IVF clinics in Harley street etc are charging premium rates for their services. There is no doubt that the NHS struggles with funding at present and my concern would be making everything non profit would limit the funding provided by councils towards this area, and having some kind of trust or organisation that can be regulated but can also turn a profit could improve services provided, staff recruitment and retention and quality of service.

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 can only base this on my own experience and what we received and would not want to do without.

Photos of Donor and Surrogate
Health history of both
Lifestyle, family and living arrangements
Origins background including interests and education.
Previous experience of egg donation and surrogacy including success and failures.
Full details of age, family members, marital status etc
Work status and history
Criminal background checks
Mental health checks and history
Agency experience, if they have worked with them previously how long etc , issues etc

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Yes

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

Yes agreed

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:

If they are unregulated and they are offering matching services, then my alarm would be that it was for reasons of financial gain and therefore i would expect it to be regulatory and then criminal to offer the protections to Surrogates and IP's

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

No

Please provide your views below:

They should be legally enforceable if done correctly and all requirements have been met

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:

Yes, in our experience both parents should be listed on the form as their correct Sex, at present only Male and Female , Mother Father is an option, Two men two women should be an option now especially in regards to surrogacy.

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:

As much information as possible would be beneficial to any child born via surrogacy.

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

I dont understand why this would not be granted or the thinking behind refusing, if everyone has entered into the agreement freely then there should be issue with a child accessing this information. Personally we have been upfront with our twins right from the start to explain the whole process in very easy to understand bite size chunks to try to avoid any negative issues or confusion or update about their origins, I would worry that refusing access to information could cause upset and negativity to any child.

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

I dont know why this would be an issue and i would have though the chance would be very very small, a bigger concern surely is that they were from the same egg donor. as many surrogate arrangements nowadays involve an egg donor who donates on multiple cycles.

59 Consultation Question 51:

Yes

Please provide your views below:

100% this is a live concern of ours currently as we know our agency have worked with another UK couple and used the same egg donor, and we would love to be in contact with them for the Twins to have at least the option to be in contact with any children born from our egg donor. AS mentioned before egg donors can have multiple rounds of donations and im sure as surrogacy becomes more popular this will become more of an issue and does need to be prepared for.

Please provide your views below:

I am unsure on my position here, i dont really see the benefit, but then the child or children may do so i would not rule it out

60 Consultation Question 52:

Please provide your views below:

If they are genetically related then yes, if not then again i dont see the benefit

Please provide your views below:

No

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

I dont really understand the example situation this would create, but if its a relationship that ended prior to the birth and was not biologically related to the child then i dont see this as a benefit to anyone.

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 fully agree

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:

Other

Please provide views below:

I dont understand why a restriction would be necessary? What is the issue with in the case of twins , one ip can biologically be the parent of one and the other of the other? Why the restriction? Is the process trying to penalize multiple births with more than one IP being biologically related, to what ends would this serve?

Please provide views below:

Yes

Other

Please provide views below:

In my experience we were able to biologically have children so surrogacy was an option for us, had this not been an option physically we would have liked the option to use a donor sperm as well as donor egg, but never even thought this would be an option, For IP's who example have had cancer treatment that has rendered them unable to have children and were unable to freeze sperm then i dont believe removing this option would be ethical for them, so i do believe it depends on the situation. To remember the whole point of surrogacy is to allow IP's who really want a family and to provide a safe and secure home possibly without the upset and difficulty faced with traditional adoption and the historic issues this brings with it. I cant understand why barriers would want to be put up to prevent this, however i welcome any reform that supports and protects traditional surrogacy at this stage .

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:

i dont understand the question

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:

To ensure i understand this correctly, if a couple enter into a surrogacy arrangement and the relationship breaks down, and the partner biologically related does not want to continue with parental rights, but the non biological IP does want to continue then this would be allowed under a parental order, then yes i would agree here,

70 Consultation Question 62:

Please provide your views below:

I dont understand the question, do i think a surrogacy arrangement entered into for medical reasons should be dealt with differently to those done for other reasons. I cant think why it would be, im assuming its handled in the same way.

Please provide your views below:

I am unsure how best to answer this question, i can only comment on the tests we took in London at the IVF clinic to check if we were physically able to take part in Surrogacy via the route we did as two men.

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

No issue with this

Yes

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

This is a delicate and difficult subject to advise on as this is very personal to each case, i find it hard to comment on what should be dictated for other people and their longing for a family, so i can only comment on my personal situation. I feel as an older dad myself, im going to be 43 this year, and our twins will turn 4 this year that i am able to offer many positives. we are financially more secure, as a couple we spent many years together and experienced a great deal that we are able to share with our twins. Our focus in life is fully on the twins, and giving them every opportunity in life and supporting them with our experience and non stop love. My fears for the future are that in 20 years time i will be over 60 and they will be early 20's and i worry about mortality and health as im sure millions of others do, I have read news articles about women who have used surrogacy or IVF to have children in their 50's and 60's and although i can understand emotionally how they feel i am torn hugely ethically where i stand on this. Children are a lifetime commitment of love and energy and support, and i worry how you can provide this long term when you yourself are already of a late age, and although there are no guarantees of health and life span, i feel you are hugely battling the odds to start a family in your 50's/60's but i am loath to impute restrictions on anothers life and their individual experience when i have historically had restrictions and others beliefs and expectations put on me through my sexuality etc.

Yes

Please provide your views below:

I would even go as far as to say 21, as i am not sure many 18 year olds would have the mental capacity to enter into such an agreement with the understanding required at 18, but i do also realise each case is unique and as long as the correct procedures are followed and there is the right screening i would not disagree with 18

73 Consultation Question 65:

Yes

Please provide your views below:

I would not want to rule someone out, but 18 does feel young as many established and reputable agencies would only work with surrogates who have had their own children already so are less likely to have problems with the process, at 18 i would feel this was unlikely to have been possible

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:

Sexual health including HIV etc is a must
Mental health suitability

75 Consultation Question 67:

Yes

Please provide your views below:

I believe this gives preparation but also allows you to have security that they all parties involved understand what they are getting into and what to expect.

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:

I strongly believe this is beneficial to all involved, and would lead to the avoidance of many of the issues experienced previously with surrogacy and many of the horror stories

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:

Where reasonable, for example costs of overnight stays, travel, time off work, medical expenses etc, should be easy to present receipts of costs incurred,

81 Consultation Question 73:

Please provide your views below:

any costs relating to medical expenses, in the case of a private treatment, additional scans, medicines, additional equipment needed by the surrogate, travel to and from appointments, parking, bed rest or medically ordered costs need to be factored in, for example if the surrogate is unable to work due to pregnancy related sickness and does not receive sick pay, child care costs as a result of pregnancy related issues,

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

I think only costs that are specific to the pregnancy should be paid, and any agreed fee for her time, energy, care and inconvenience that a pregnancy puts on her and her family life. Your trusting this woman to look after herself and your unborn child or children and that she is essentially putting her life on hold to care for your unborn children, she has to abstain from sexual activity with her husband or partner for certain periods and will very likely feel unwell or not her usual self throughout or for parts of the pregnancy which has a value she needs compensation for.

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 it needs to be covered as this can have a huge impact on the quality of that surrogate's life, whether this is via some kind of insurance policy or directly to the surrogate, I'm unsure of the best route.

85 Consultation Question 77:

Please provide your views below:

Yes, I think you should be able to if you wish.

86 Consultation Question 78:

Please provide your views below:

I don't think they should be impacted in anyway. I think this is a huge risk that if their benefits are affected, the impact this could have on their ability to care for the unborn child through the pregnancy, and would further impact the IP's.

87 Consultation Question 79:

medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or, specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

Please provide your views below:

It's difficult as an IP, these costs can naturally be huge and are a big worry, but for the protection of the surrogate and the attraction of new and future surrogates, their health and care needs to be covered.

Please provide your views below:

We gave our surrogate a gift of a bracelet with the twins' names on after they were born. This meant a great deal to her and to us to know that she had that to keep and as a reminder of our special time together and what she had done and what it meant to us. It wasn't hugely expensive, but I can imagine if we had been hugely wealthy, the size of the gift we would have wanted to give based on what this woman has done for you, would be considerably larger. It's difficult as I understand the concern of making this a financial transaction and all that entails, but also each situation is different and the financial situation is different, a very wealthy family may wish to compensate their surrogate for what they have done for them, the care provided to the unborn twins and also they may want to work with them in future. So it's difficult if you restrict that you take the ability away, although I understand the difficulty around setting limits.

a fixed fee set by the regulator (operating as a cap on the maximum payable), or

Please provide your views below:

I feel a little of both, I feel there should be guidelines as to what the fees and compensations are, but I also feel there should be a view of individual circumstances and an allowance to go over this if there is a wish rather than an expectation, and it's documented and all above board, without risk of breaking the law.

As a very rough example, the American reality TV personality Kim Kardashian and her husband Kanye West, the music producer and performer, have used two surrogates. I have read articles that said their surrogate was living with them, they clearly are in a much better financial position than most IPs, so they would be able to pay their surrogate a lot more and would possibly want to pay her more, they may wish to work with her on multiple births, if she is living with them, she has had her life disrupted hugely and is likely under additional pressure. Where you have to be careful is the high profile and wealthy IP's need protection from exploitation, but also should have some freedom to pay their surrogate compensation greater than a couple not in that situation, but how do you regulate that, I'm not qualified to advise here, only offer my opinion.

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 this is a nice idea, although my concern is that the policies could be set at such extreme rates that they could be a barrier to many to enter into the agreement, for example some insurance in America are in the tens of thousands of pounds, and for many it means it's just not an option. If they can be regulated and not exploited, then I think it's a good safeguard for all involved.

89 Consultation Question 81:

Please provide your views below:

I think they should be able to buy gifts, and I think reasonable is difficult to define, but as already stated we did and we found it a special moment, and I know was appreciated.

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 think its necessary to attract surrogates and make it worth their while to go through the life altering and changing process. AS already stated before they are putting their life and their families life on hold to some degree, they are taking care of your unborn child and the responsibility that goes with pre natal care. They are changing their body, risking their health in some ways, and likely going to experience sickness and discomfort , and they deserve payment for this.

a fixed fee set by the regulator.

Please provide your views below:

A Little of both, i think there should be guidelines to avoid the process being exploited, and those fees need to be set and legally agreed before entering into the agreement, they cannot be changed during or at the end of the process.

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:

All within reasons, and following set guidelines

91 Consultation Question 83:

Please provide views below:

I agree with this, as the surrogate did not ensure the full pregnancy so does not receive the full amount, i would suggest the payments are divided monthly and you only receive the payments during the pregnancy, Although naturally up until this point they have already provided big parts of the surrogacy service to deserve compensation for that, this is all subject to it not being the fault of the surrogate that the pregnancy miscarried

I feel that the IP's also need whatever money they have set aside towards the next round of surrogacy so should retain part of the funds and how much will depend on how far the pregnancy went.

to any miscarriage or termination; or

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

i am unsure on my opinion here

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:

providing private healthcare to surrogate.

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:

Other

Please provide your views below:

This is difficult, for example if its thought that the surrogate is endangering the health of the baby in anyway then i think that would have implications.

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

We researched and found legal representation that gave us advise pre and post birth. We felt fully legally versed in our options from an experienced provider. We travelled to and from America with copies of all of our legal documents along with letters from our solicitor about everything. When we returned home with the children we began the long and arduous task of producing compiling and achieving all of the requirements and information, documents and proof required. We received our parental orders in August of the following year after the twins were born, so 10 months later, It took us time to adjust to life with newborn twins and the disruption and changes that go with it. During this time i appointed myself as the person who would handle the parental order process and liaised with our solicitor. without the help and guidance of the solicitor i would have found it much more challenging, and naturally we incurred a lot more additional expense on top of everything else, I do feel this could be made easier, and simpler and a clear set of requirements given to avoid all the additional expense and hassle. From application to court date was only a few months and not excessive. and once we received the parental orders we could apply for passports immediately which was great.

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:

As long as no delays that would mean you could not return home with the child, maybe in this instance it can be started and completed after you return?

Not Answered

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

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:

100% we had to rely on our own legal advice from our solicitor

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 provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:
2015

international

If international, in which country did the arrangement take place?:

USA

Yes

(b) male same-sex couple;

118 Consultation Question 110:

international

Yes

No

Please provide the cost of any legal advice or representation below:

I believe in the region of £10,000, We would have liked to have had support in court, but this rose to close to £15-20,000, it turned out we didnt require it, as our pre court advise and support was so good, the actual court appearance went without issue and was a very positive experience , but you have no idea what to expect.

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

As we were supported by US law with our surrogacy being in California, we had the confidence and support of the law with us being granted parental rights pre birth , this made everything much better with regards to the pre natal care, our rights with our Surrogate and at the hosipital for their birth and arranging all documents , the issue was when we returned to the UK, there was always an underlying unease until the parental order was granted. It left me worried if we would encounter issues if they had any medical emergencies and left us a little in a grey area. Financially we had the costs of additional legal fees for advise and support, which although hugely appreciated, really stretched us and was more funding we had to find on top of all of our costs we had already had.

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

international

Please provide your views below:

I believe its in the region of £150-175,000 all in, broken down into these main costs.

IVF Clinic

Egg Donor

Surrogate

Legal fees

Agency fees

Insurance fees

Legal Fees

Transport and accomodation

Currency conversions costs

Please provide your views below:

Loans, Savings, Borrowed from family, debt

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

4. If responding to this consultation in a personal capacity, which term below best describes you?

- other

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

We invite consultees' views as to whether, in England and Wales:

1. all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

2. if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

We invite consultees' views as to whether they are of the view that, in Scotland:

3. there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
4. it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
5. further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

6. entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,

7. complied with procedural safeguards for the agreement, and
8. met eligibility requirements,
on the birth of the child the intended parents should be the legal parents of the child,
subject to the surrogate's right to object.
Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

We provisionally propose that:

9. the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
10. this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
11. the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

12. the surrogate will be the legal parent of the child;
13. if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
14. the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’ – particularly with the ‘intended parents’ acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child’s best interest being the paramount consideration, in accordance with the UN Special Rapporteur’s recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 13.

We provisionally propose that, in the new pathway:

15. the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
16. if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
17. if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

(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 of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

We provisionally propose that:

the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

We invite consultees' views as to whether:

101. any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
102. if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

We invite consultees' views as to:

103. whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
104. if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions

and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the ‘intended parents’ are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman’s health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn’t in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of ‘attractiveness’ for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people’s thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself. There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other countries.

We invite consultees’ views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the ‘intended

parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

105. when the child was born;
106. whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
107. whether the arrangement led to the making of a parental order in the UK; and
108. whether they are a:
 1. opposite-sex couple;
 2. male same-sex couple;
 3. female same-sex couple;
 4. single woman; or
 5. single man.

N/A

Paragraph 18.2

Consultation Question 110.

We invite consultees who have experience of applying for a parental order in the UK to tell us:

109. whether the surrogacy arrangement was domestic or international;
110. whether they had legal advice before the making of the parental order;
111. whether they were represented by a lawyer in court; and
112. the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

113. medical screening; and
 114. implications counselling
- (where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- 115. to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and
- 116. to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

We invite consultees to tell us of the impact of:

- 117. the current requirement of a genetic link; and
- 118. any removal of this requirement in cases of medical necessity:
 - 1. in the new pathway;
 - 2. in the parental order route for domestic surrogacy arrangements; or
 - 3. in both situations.

Paragraph 18.11

Consultation Question 114.

We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- 119. their profession; and
- 120. what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- 121. if particular proposals will increase accessibility, and why; and
- 122. if particular proposals will restrict accessibility, and why.

N/A

We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- 123. if particular proposals will increase accessibility, and why; and
- 124. if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

We ask consultees who are intended parents to tell us:

- 125. whether the surrogacy arrangement was domestic or international;
- 126. what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- 127. how they raised the funds for the surrogacy arrangement(s);
- 128. what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- 129. how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have

an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-12 16:17:56

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

No

Please provide your views below:

As long as all parties are in agreement, I don't think that this is necessary.

Please provide your views below:

If there is a need for a judge, anything should be able to be dealt with in the family court. If the family court sees a reason why they cannot hear the case, then it could be passed to the high court.

9 Consultation Question 2:

Please provide your views below:

I am not familiar enough with the legal system to answer this question.

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:

I am not familiar enough with the legal system to answer this question.

11 Consultation Question 4:

Other

Please provide your views below:

I am not familiar enough with the legal system to answer this question.

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 not familiar enough with the legal system to answer this question.

13 Consultation Question 6:

Please provide your views below:

I am not familiar enough with the legal system to answer this question.

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

Leaving the child in limbo is not in the best interest of the intended parents, the surrogate or the child. It leaves the child in a situation where it is being cared for by people who are not legally responsible for it. This also leaves the surrogate legally responsible for a child that she never intended to care for, and is not living with.

This can pose problems with medical care, daycare, applications for a passport, etc. where the legal information do not match the actual situation the child lives in.

15 Consultation Question 8:

Other

Please provide your views below:

While I do see the benefits to keeping records of this information, I do not trust that we will always live in a society where this information will only be used for good. At this point in time, it does seem that society is moving towards absolute acceptance of all forms of surrogacy, however it cannot be guaranteed that there won't be a government at some point that will think otherwise, and that can use this information for harm rather than good.

Another period

Please provide your views below:

Records of this type should not be kept for the reasons stated above.

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 believe that people who donate anonymously are doing so out of a desire to give an invaluable gift to people who do not have the ability to create a gamete of their own. If that person chooses to give that gift anonymously, it should be respected. Knowledge of who that person is, is not at all relevant to raising the child that is created with that gamete.

While I don't know any adults who were born through surrogacy because it is relatively new, I do know many people who were adopted. They do not know who their genetic parents are in almost all cases, and I do not know even one who has any interest in knowing. So, I also believe that even the children produced by such donations have no need to know who donated the genetic material to create them.

It is more important to focus on parenting rather than genetic heritage.

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:

For the same reasons stated above in regards to gametes, I do not believe that there should be any legal requirement to prevent someone from anonymously donating genetic material.

18 Consultation Question 11:

Yes

Please provide your views below:

I would hope that this would rarely, if ever, happen - if everyone involved in this process is thoroughly vetted and proven to understand what such a process means, this would almost never happen. It is more important to make sure that such a disagreement does not arise by ensuring everyone understands what they are getting themselves into. I do not believe a surrogate should be allowed to request custody simply because she has changed her mind about the arrangement.

That being said, even if everyone understands completely what they are entering into, and for some reason the surrogate feels it's in the best interest of the child for her to retain custody, then I think she should be allowed to request this. It should never be used as a tactic to elicit money or favours of any sort from intended parents - care needs to be taken to make sure that this is not what is going on if such a situation arises. A surrogate should only be allowed to do this if she believes the welfare of the child is at danger by living with the intended parents.

19 Consultation Question 12:

Other

Please provide your views below:

Based on the answer above, I believe that this should only happen in very rare and extraordinary circumstances. If a surrogate were to request custody, I think this should be treated as a child welfare case, and not be passed through the courts as this will take too much time.

If a surrogate is only allowed to request custody because she believes the child's welfare will be better living with her, then this needs to be immediately addressed.

If a surrogate is allowed to request custody, simply because she has changed her mind, this also needs to be addressed immediately, rather than taking several months to work its way through the courts. A child's legal status should not be left in limbo.

20 Consultation Question 13:

Other

Please provide your views below:

I believe that the default position should be custody of the child by the intended parents from birth. Any other situation should be possible, but require legal action.

The only instance where I could see this not being possible would be the death of both intended parents during the pregnancy - they would not be able to provide a declaration in this instance. A legal document (like a will) should be put in place at the time of the surrogacy agreement to determine who should have custody of the child - the burden should not fall to the surrogate - in most cases, I don't believe she would want legal custody of the child. Of course, this is more complex situation and the court would probably need to be involved.

Apart from a situation like the above, there should be no need to file or declare anything, or involve the courts once a surrogacy agreement is in place - the default should be legal guardianship for the intended parents.

21 Consultation Question 14:

Yes

Please provide your views below:

The current parental order system is designed for situations where one, or both, parents are losing custody of a child. It is designed inherently around there being a problem - which is not the case in surrogacy. In most circumstances all parties are in agreement.

While the case workers understand this, the process needs to be adjusted - there were many instances in our process where a case worker just didn't know exactly what to do since the questions she or he were asking were simply not relevant. The process has to be completed, and it seemed it was difficult for them to complete the process without indicating that there was a problem on either end.

A separate evaluation from the current parental order process needs to be developed. One that does not require a recognition of a problem on either end - it needs to be relevant to the specifics of surrogacy - this should make the evaluation easier for the case workers to properly evaluate it. It will also

mean a lot less awkward questions needing to be asked that are not relevant.

22 Consultation Question 15:

Yes

Please provide your views below:

While the surrogate's spouse or partner does play a role in the process (in many ways they are making a very big sacrifice in their lives as well), I believe most, if not all would prefer the intended parents to be the legal guardians of the child from birth. In our case, I know our surrogate and her husband would have preferred this.

No

Please share your views below:

I don't believe that the surrogate's spouse would want to be the child's guardian. Generally, he understands the nature of the arrangement and process and does not want to be legal guardian for someone else's child. This is certainly the case in our situation.

I think that there are probably even some cases where a woman who might want to be a surrogate might not go ahead with the process because she AND her husband or partner automatically become legal guardians. It probably prevents some potential surrogacies from proceeding, especially where the spouse might not be as familiar or know the intended parents as well as the surrogate does. There is no legal framework from preventing them from walking away and leaving him with a child he does not want.

23 Consultation Question 16:

Yes

Please provide your views below:

If the legal custody of the child is determined before conception, this should not be an issue. This is an extremely emotional and hopefully rare possibility, but it is a real one. The more that is already determined beforehand, the better. People do not necessarily make rational decisions in situations like this.

Yes

Please provide your views below:

For the same reasons as the above question.

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:

For the same reason as above. The more that is determined beforehand in emotional situations like this, the better. It would be better that neither the surrogate nor the intended parents need to go through further legal procedures after experiencing such a horrible loss.

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 don't believe that making the intended parents or the possible surviving spouse of the surrogate go through court procedures after such horrible incident is in anyone's best interest. I think determining the outcome of such a situation beforehand is better. This would be too emotional of a situation to then have to go to court to determine who is the legal guardian of the child. It should be automatically determined by the surrogacy agreement.

26 Consultation Question 19:

Yes

Please provide your views below:

Again, anything that avoids further legal procedures in such emotional circumstances is better for the child and the surrogate. The intended parents should be named automatically so that the child can inherit the estate and also go to whomever they've determined should be the guardians.

In our own circumstances I was always very paranoid about something happening to us both - it would have left our daughter in limbo legally, but also would have put a huge burden on our surrogate to sort out our estate and arrange for all the legal procedures necessary for giving custody of our child to

who we had designated.

Please provide your views below:

I believe that this makes an already very complex and emotional situation even more complicated. Determining before conception who will be the legal guardians of a child before it is born would prevent any need to go through any of this.

It's unfair to ask the surrogate to have to be responsible for the legal process in the case the intended parents die.

27 Consultation Question 20:

Yes

Please provide your views below:

If there was only one intended parent at conception, then it should remain the same throughout - this should be the only person on the birth certificate. If an additional person wants to have custody of the child, this should be done after the fact.

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

I don't believe that making the custody of the child more complex than it already is would benefit anyone. A more simple solution would be to give custody of the child to the intended parents at birth.

In dealing with various governmental bodies after the birth of the daughter, if there were three or more parents listed on the birth certificate (even temporarily) this would cause a lot of confusion. In applying for passports, medical exams, citizenships, etc there would be too many questions of how to make this situation apply - nobody would understand what to do with there being more than two parents listed.

It's a sad reason, but most forms for anything have a space to enter information for two parents - almost always a mother and a father. It is already sometimes complicated when listing two fathers. It would be even more impossible to make certain registrations when there are more than two "parents" listed.

29 Consultation Question 22:

Please provide your views below:

I believe that if a system of laws and enforceable contracts are in place, there shouldn't be a need to involve judges or the courts. They should only be involved where circumstances go beyond what has been determined by the contract or law and special analysis must be taken.

From the speed (over six months) of our own procedure, it seems the courts are already overwhelmed, and should be focusing on cases where there is a problem - where a parental order is necessary to ensure the welfare of the child, and not be bothered by cases where all parties agree and have made a legal framework already.

30 Consultation Question 23:

Please provide your views below:

I think that the current welfare checklist in regards to the parental order process is not entirely relevant. It's built around a situation where a child's custody is being reviewed because there is a problem - either it's been taken away from one or more of its parents or is being given up voluntarily, but this can only be happening if there is a problem.

In the case of surrogacy where all parties agree, many of the questions, investigations and procedures are not relevant - this was certainly the case in our experience. This process just creates delays and confusion. The case workers are not able to fully apply the current process to this type of situation.

It would be better if there were a separate type of evaluation made. It should be more psychological - evaluating whether the surrogate and the intended parents understand the relationship they are about to enter into and also that everyone is completely understanding of what that relationship is AFTER the birth.

The evaluation should focus less on the safety and care of the child. While this shouldn't be ignored, it shouldn't be the focus. It needs to be an evaluation that all parties understand what they are doing and to determine what their motives for doing it (on either side) are.

31 Consultation Question 24:

Please provide your views below:

Further to my comments above, it is more important to understand the surrogate's and intended parents' motives for entering into this agreement. This will prevent anyone from being taken advantage of by the other. All parties will understand what their relationship is, before, during and after pregnancy. If the checklist determines that any party does not seem to understand this, or they are not all on the same page, then the surrogacy shouldn't go through.

The current system is based more on the welfare of an existing child, which is not the case pre-conception of a surrogacy.

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 familiar enough with this legal document to comment.

33 Consultation Question 26:

Yes

Please provide your views below:

Yes, I agree completely. Limiting the time period of legal limbo can only help the child.

Not having legal custody of our daughter for over 6 months did create some logistical problems for us. It wasn't anything life threatening, but we weren't able to travel with her out of the country to visit friends and relatives as just one example. It was many months before she could meet her cousins, aunts, uncles, grand parents, etc.

34 Consultation Question 27:

Yes

Please provide your views below:

In our experience, not having legal custody of our daughter for six months, was a challenge. Apart from not being able to travel abroad with her to meet family and friends, it creates a situation of stress - if something were to happen to us or to the surrogate or her husband while she was still not legally our responsibility, would have created a very complex situation. This would only have occurred in the event of a tragedy, which is certainly not when you would want to have to deal with an additional court procedure. It's an unnecessary stress added to your life.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

No

Please provide your views below:

I believe that the child should automatically be the responsibility of the intended parents from birth. This is the desire of all involved - it avoids a situation that could leave the legal status of the child in limbo because of a tragedy, I do believe that almost all surrogates (or their partners) do not want custody of the child, and relieves the stress of uncertainty over this situation from all involved.

The intended parents should be legally responsible by default - any other situation should be possible, but require legal action.

36 Consultation Question 29:

Please provide your views below:

Responsibility should fall only to the people who are 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?

Other

Please provide your views below:

The surrogacy agreements should be kept, but should be a legally binding contract.

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:

In a sense, it was good to use the agreement, because it assured us that we were all on the same page about every step of the surrogacy process. It's a good tool to use, because you might find you are not on the same page about everything, and it's better to know before you start.

We were surprised to find out that the agreement is not legally binding, however, it was still useful because of the reasons stated above.

The clinic we used in the US for the embryo creation and transfer required health screening which I think is vital to this process. counselling and legal advice are also important.

39 Consultation Question 32:

Please provide your views below:

I think they should be brought into the new pathway. the content and topics discussed within the agreements are important to the process.

Please provide your views below:

These agreements should be formalised and made into legal documents rather than an informal agreement.

40 Consultation Question 33:

Yes

Please provide your views below:

I believe that standardising the rules around surrogacy probably requires some sort of regulatory licensing. This should enforce standards are met across the board, and that there is consistency legally and also procedurally.

No

Please provide your views below:

I believe standardising the process can only benefit surrogates and intended parents. It would help people to understand the process better.

Yes

Please provide your views below:

Someone should be aware of what the regulations are and how to comply. It doesn't necessarily mean this would be that person's only job. But, it would mean there is one person accountable for compliance.

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;; providing data to the regulator and to such other person as required by law.

Please provide your views below:

The regulator should train staff wanting to be qualified to manage compliance.

Please provide your views below:

This person needs to be able to convey to patients how the medical and legal compliance relate to them as well - mainly in explaining a time frame for the entire process.

Please provide your views below:

This person needs a broad understanding of law, medicine and also inter-personal skills. It would be difficult to find someone with all of these skills, but it is important they be able to reconcile a medical procedure with legal procedure while managing patients understanding of both and how they are interrelated.

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 think it would mean that very few would be open, which would result in long waiting lists for any that are able to open. This would limit who has access to surrogacy in the UK.

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:

Matching and facilitation services, simply put are agencies that match people who want to be a surrogate with those who are looking for a surrogate, and don't know anyone in their immediate circle who would be willing to do it. Putting people together who have a compatible desire, but don't have any other way of finding each other.

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:

I think that any way people find each other is ok - it's what happens afterwards that needs the regulation most. However, if you are paying money to an organisation to match you, it should be regulated. If you find each other informally, then there is no way to regulate this and shouldn't prevent anyone from going forward with surrogacy.

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

My answer is the same for consultation question 36

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 familiar enough with the legal terms to answer this.

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:

Professional surrogacy organisations are a part of this entire process and should be covered under the same regulations.

Please provide your views below:

Creating a framework from beginning to end that creates a clear and consistent path to surrogacy where all parties are aware and agree on what they are doing is key.

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 believe that the surrogacy agreement should be enforceable including anything referring to payment.

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:

If consultants can't charge for their services, there will be very few if any who actually do this, which will either create long waiting lists for the few agencies that do, or will create a situation where there are no legal services. The services will be forced to act underground and thus be completely unregulated.

There should be regulation on the amount that can be charged to prevent predatory practices.

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 point of an agency is to match people who would not necessarily be able to find each other normally. Advertising would be the most effective way to do 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?

Yes

Please provide your views below:

This is a public record, I don't see why it shouldn't be accessible.

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

No

Please provide your views below:

While I see nothing wrong with the situation that brought about a child through surrogacy, and public sentiment is also going in the same direction, we cannot be certain that things can change, either in society or governmentally. I would not want to see a situation where recording this personal information could be used publicly against someone.

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:

Apart from not recognising intended parents as the legal guardians of the children born through surrogacy at birth, there is no problem that I see in the registration system. Intended parents should be able to register their child's birth just as any other parents can.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

I don't see why this would be a problem.

55 Consultation Question 47:

No

Please provide your views below:

I believe that this is a violation of privacy. I do not see how having access to this information about people's personal lives benefits the public.

I also believe that while in our current political and social climate, this information is ok, but we cannot be sure that in the future this information could be used to harm those on that list.

No

Please provide your views below:

This information is only relevant to those involved in any specific surrogacy. Those involved in the surrogacy will know the relevant information as it pertains to them.

There is no benefit to the child, surrogate, intended parent or genetic donors for this information to be made public.

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 is at the discretion of the family to make these decisions, not the government.

also, keeping a public record of any of this information could be dangerous in a different political or social climate.

57 Consultation Question 49:

Other

Please provide your views below:

I do not believe the information should be recorded publicly. If a child does want to find this information out, they should need to involve their parents who can discuss it with them. Making the process family-based and less automatic, would ensure that more time and consideration goes into this search before it begins.

Please provide your views below:

I do not believe that anyone should have access to this information, nor should it be recorded publicly.

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 chances of such a thing happening are so low, that it does not out-weigh the negative reasons for keeping public records of very private information.

59 Consultation Question 51:

No

Please provide your views below:

This opens up the possibility of one party contacting another party that does not want to be contacted. These are potentially emotional and complex topics, and it is not the business of the government to regulate such things.

If someone really wants to find his or her genetic relatives for whatever reason, I'm sure they can find a way. It's not the government's role to facilitate this.

Please provide your views below:

I do not believe that there is any reason the government should facilitate this.

60 Consultation Question 52:

Please provide your views below:

this does not consider the mother's right to not be known. it is possible that she does not want to personally know these children for whatever emotional reasons.

Please provide your views below:

same as the above answer.

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:

I'm not sure who this person would be - if they are an intended parent, but not on the application for a parental order, there must be some reason for this. The government should be mindful of whatever those reasons are and not infringe on their rights by forcing them into a situation they clearly opted themselves out of.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

I agree - in practice it is already not followed. it is more important to make a decision in the best interest of the child rather than an arbitrary date.

63 Consultation Question 55:

Other

Please provide your views below:

I'm not familiar enough with this circumstance.

Yes

Please provide your views below:

Any decision made in the best interest of the child is best.

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 don't believe that you must be domiciled in the UK.

in a situation where one friend offers to be a surrogate for another, and that friend who offers lives in the UK, and the other does not, it should not prevent the surrogacy from happening. A happenstance of location shouldn't prevent a good deed from one friend to another.

In the case of paid-surrogacy, it shouldn't matter where the intended parents are living. If a UK resident is able to use a surrogate in another country, why is the opposite not allowed?

Please provide your views below:

I do not believe that the requirement of habitual residence should be necessary.

65 Consultation Question 57:

Please provide your views below:

I don't believe this is reflective of modern medicine or modern families.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Yes

Please provide views below:

I do not believe that any intended parent should go through with surrogacy if they do not intend to care for the child to live with at least one of them.

67 Consultation Question 59:

No

Please provide views below:

I believe this is a personal decision and can be made for any number of reasons. It is of no business of the government why someone would choose or not choose to use their own gametes (if they have any).

Please provide views below:

I don't see why it shouldn't be.

No

Please provide views below:

There are many reasons why someone would not want to provide their own gamete (if they are able to), and it is not the business of the government as to why or why not.

In addition, people will still continue to do it if they want to - it will just create a situation of falsification of documents rather than stopping the practice.

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:

I do not think there should be a requirement for a genetic link.

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:

I do not believe that regulating the genetic link solves this problem. A contract that stipulates what happens in the event of the breakdown of the marriage before birth should determine what happens in this situation.

A genetic link is not necessary for the care of a child.

70 Consultation Question 62:

Please provide your views below:

A surrogacy agreement should be used in all cases.

Please provide your views below:

i do not believe there should be a medical necessity for surrogacy and creating this requirement will only invite those who don't meet it, but still want to go through with surrogacy to falsify documents to get around this requirement.

71 Consultation Question 63:

No

Please provide your views below:

I do not believe that registering this information is in the public's interest. this information is private and for the use of the family created through surrogacy.

Please provide your views below:

A genetic link is not required to care for a child and is not relevant - a child should be cared for by a person or people who will give it love and a good home, and has nothing to do with who it is genetically related to.

Registering genetic information about anyone publicly is a violation of privacy.

No

Please provide your views below:

This is a violation of her privacy and cannot guarantee future persecution under a different social or governmental situation.

72 Consultation Question 64:

Yes

Please provide your views below:

If custody is not given at birth for whatever reason and the process must go through the court system, then all factors should be considered when determining the best situation for the child.

Please provide your views below:

All possibilities should be open and only what is best for the child should be considered.

Yes

Please provide your views below:

Intended parents should be of-age to make legal decisions for themselves.

73 Consultation Question 65:

Yes

Please provide your views below:

Any surrogate should be of-age to make legal decisions for herself. A woman of less than 18 (even this is young) does not have the maturity to make such a decision.

Yes

Please provide your views below:

Surrogates should be of-age to make legal decisions for themselves. Even 18 is young to enter into such an arrangement.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

yes, I believe that the surrogate should be both mentally and physically ready for surrogacy. the husband or partner should be mentally ready, and the egg donor should also be mentally and physically ready. the egg donor should also be tested for serious genetic issues that could be passed along to a child.

Please provide your views below:

I think testing should be done by a licensed clinic.

75 Consultation Question 67:

Yes

Please provide your views below:

Yes, at least a psychological evaluation should be done. I don't know if extensive counselling should be required. Candidates should only be allowed to pass to the next phase if they have shown in their psychological evaluation that they would not need further counselling.

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, independent legal advice is key to creating a sound legal agreement.

77 Consultation Question 69:

Yes

Please provide your views below:

Yes, I agree that everyone involved should not have committed any major crimes.

Please provide your views below:

I'm not familiar with what those offences are.

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, I believe it should be required for a few reasons.

She should know how she reacts medically, physically and emotionally to pregnancy and birth first. this will help to avoid any medical complications or

emotional problems that could cause harm to either the surrogate or the embryo.

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 think this should be determined by a doctor and through a psychological evaluation on a case by case scenario for each additional surrogacy pregnancy. If a doctor and a psychologist confirm that a woman is capable to carry a child and she wants to do it, then there shouldn't be any other impediment.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on an allowance;

Please provide your views below:

I think a general amount of an allowance is ok to be capped at a sum for the entirety of the pregnancy. Any amount that is above that, she should need to provide a receipt.

for example, any expense that is under £100 does not require a receipt, and she has up to £200 per month to spend on such items. Anything over £100 or any amount over £200 in a month would require a receipt. It can also be possible to make a separate allowance for clothing or food or childcare that is out of the scope of this general allowance.

81 Consultation Question 73:

Please provide your views below:

The surrogate should not need to go out of pocket on any expenses related to surrogacy and it's the intended parents responsibility to pay these expenses.

Any expense that is justifiably caused by the pregnancy should be considered essential. the cost must be caused by the pregnancy to be considered essential.

An essential cost could be having to buy new maternity clothes, childcare while she attends medical examinations, vitamins or nutritional supplements. These are all a result of being pregnant.

82 Consultation Question 74:

Please provide your views below:

Yes, parents should be able to pay the surrogate additional costs - these are things that make her life easier while being pregnant but are not essential to the pregnancy.

For example - during a heat wave, she wants to buy an additional fan for her bedroom - this is not essential to the pregnancy, but it's an additional cost for her comfort.

83 Consultation Question 75:

Please provide your views below:

Parents should pay any and all costs related to surrogacy. the surrogate should not be financially responsible in any way.

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:

If the surrogate had the job before being pregnant and a doctor has forbidden her to go to work, then it is fair that the parents pay. this loss of wages is directly the result of the pregnancy.

however, if a surrogate went out and found a job after becoming pregnant, then this is not the responsibility of the parents. this was not a known possibility at the time of entering an agreement.

85 Consultation Question 77:

Please provide your views below:

I think parents should pay any lost earnings as long as the surrogate has the job before she enters the surrogacy agreement as long as two separate doctors have ordered her to stop working during the remainder of her pregnancy. Two doctors are necessary to verify the validity of the claim.

if she receives government compensation for lost wages, then the parents should make up the difference.

86 Consultation Question 78:

Please provide your views below:

I have no experience with this. our surrogate was not eligible for either program.

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:

Any procedures should be paid directly to the medical professional who does the procedure - this should not be paid directly to the surrogate.

The surrogate should be entitled to compensation for any physical damage or losses that might change her life permanently. however, this could potentially be taken care of in an insurance policy that the parents pay for during pregnancy.

Please provide your views below:

I believe that paying a fee to the surrogate above any actual expenses is fair. In practice this is already done and therefore un-regulated.

left to the parties to negotiate.

Please provide your views below:

I believe that letting the parties negotiate is fair - capping the amount (especially if the amount were under "market value") will probably just force additional payments to go un-regulated or paid by other means.

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 insurance for the surrogate.

Please provide your views below:

Yes, the parents should pay for a life insurance policy covering this tragedy. It's unfair to ask the surviving partner to carry the burden of her death.

89 Consultation Question 81:

Please provide your views below:

They should be able to buy gifts. If a surrogate is able to be paid a fair fee that is market rate, then there will be no need or expectation to supplement a low fee with lavish gifts.

Any gifts therefore would be as a gesture of gratitude and within the means of the parents.

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:

There are very few women who would perform surrogacy altruistically for complete strangers, and there are very few people with friends who would be willing to perform surrogacy at all. We were lucky that we had a friend who offered to do this. Most are not this lucky. I think being able to pay a surrogate will open up the possibility to have a family to many people who can't because of the current laws.

any sum agreed between the parties to the surrogacy; or

Please provide your views below:

I think a fixed fee set by a regulator will inevitably be too low - this will force parents to pay the additional amounts in unregulated ways and could get out of hand. Allowing the parties to agree to an amount beforehand that is reasonable to both should avoid any problems down the line.

essential costs relating to the pregnancy;; lost earnings;; compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or, gifts.

Please provide any views below:

I believe that even if a surrogate is paid, she should not go out of pocket to do what is required to ensure a healthy pregnancy. Any cost due directly to being pregnant should be covered by the parents.

91 Consultation Question 83:

Please provide views below:

A fee schedule should be determined in the agreement before conception that details exactly how and when her payments are made. The payments should be made after certain milestones - a percentage at different points along the pregnancy journey. This will ensure that she will have been compensated for a portion of the pregnancy before a miscarriage or termination.

some other period of time (please specify in the box below).

Please provide your views below:

the fee should be split throughout the pregnancy. a certain percentage is paid at conception, another at the end of each trimester, and then a final payment after a live birth. the amounts and percentages of the total can be negotiated during the agreement period.

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Yes

Please provide your views below:

There is no reason to treat them differently in terms of payment.

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:

None

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:

Again, payment to surrogates is already happening. It is better to regulate it to make sure that neither party is taking advantage of the situation.

95 Consultation Question 87:

Please provide your views below:

There should be a way to determine the validity of any payment requests that the parents do not agree with the surrogate as being necessary.

96 Consultation Question 88:

Yes

Please provide your views below:

No

Please provide your views below:

The surrogate should uphold any of her own requirements of the agreement in order to be paid.

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:

There is no reason to wait or delay an already lengthy process. There are many months between the time a pregnancy is confirmed until birth when all of the paperwork can be completed.

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Yes

Please provide your views below:

There is no reason to wait until after birth to start the process. The sooner the process can be completed and the family can return home the better. Waiting can only add stress.

Other

Please provide your views below:

I'm not familiar enough with this legal situation.

Yes

Please provide your views below:

It is the intended parents who will care for the child - the child's best interest is to recognise this as soon as possible.

Yes

Please provide your views below:

The intended parents are who will care for the child - ensuring this relationship is taken into consideration above others is important.

Please provide your views below:

Leaving a child in legal limbo as well as potentially stateless in a foreign country is not in the best interest of the child or its parents.

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?

Other

Please provide your views below:

I do not know what the EU Uniform Format Form is.

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 about 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:

if parents read this, it should prevent some instances of people getting into situations that they didn't intend to get into. However, it must be written carefully as not to prevent people from going forward with international surrogacy where there will not really be any problem.

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:

Why should international surrogacy be excluded. It is the only option for many people and it's only fair that people who choose this path are given a clear means to legal custody of their children in the UK

107 Consultation Question 99:

Yes

Please provide your views below:

Yes, the government should ensure that it promotes international surrogacy only in countries where the treatment of surrogates, intended parents and the children created by this process is fair and equivalent to the UK.

I also agree that if the child receives a birth certificate in the country of birth naming the intended parents as the legal parents, it is only complicating the situation to then have to apply for a new UK birth certificate - there is no transfer of custody or legal guardianship. The current system essentially asks parents to transfer custody of themselves to themselves with the permission of someone who never had custody of the child to begin with.

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:

I'm not sure if it was our specific condition, but neither I nor my partner were entitled to any parental leave because of the parental order system. We were not legal guardians of our daughter and therefore were not entitled to any parental leave. We each took a week off of work and then had to go back. I think if we were legal parents at birth, we would have been entitled to something.

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:

Either parent should qualify. How would you determine which one is meant to qualify and which one doesn't? Shouldn't it be up to the couple to decide who best to take parental leave?

111 Consultation Question 103:

Please provide your views below:

I do believe that intended parents should be entitled to time off of work before birth for pregnancy related reasons that require their presence or where their presence would normally be required or expected if they were carrying the child themselves.

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 don't believe that a person who is not actually physically pregnant themselves would need to use any 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 provide your views below:

I believe that men should be given more rights to parental care. It is a very female-centric and pregnancy-centric law in the UK and needs to be amended to reflect a more modern world.

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'm not familiar with succession law.

115 Consultation Question 107:

Please provide your views below:

I do think something needs to be formally change the way NHS records a birth to prevent confusion at the beginning - often the visiting nurses are looking for the surrogate mother, or the visiting the surrogate and looking for the baby. It was not very well organised. Nobody gave us any trouble, but there was a lot of confusion at the local GP practices and visiting nurses - more of waste of their own time and tax payer resources than anything else.

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:

3/3/2017



domestic; or

If international, in which country did the arrangement take place?:

Yes

(b) male same-sex couple;

118 Consultation Question 110:

domestic; or

Yes

Yes

Please provide the cost of any legal advice or representation below:

£10,000 roughly

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 lot of additional stress created by this situation. The worst is worrying about something happening to me and my partner and which would leave our daughter in a legal limbo - who would be her legal parents, how would we leave our estate to her so she'd be cared for financially. None of this is certain while you're waiting for a parental order for nearly six months.

On a more personal level, it was difficult not being able to get a passport for our daughter and travel overseas. both my partner and I are from other countries and many of our friends and family live there. we weren't able to visit them or bring our daughter to meet grandparents, cousins, uncles, aunts,

etc. for roughly 10 months. that's a large portion of a baby's life that our families missed out on.

120 Consultation Question 112:

Please provide your views below:

Medical Screening: roughly £5000

Implications Counselling: £200

We paid out of pocket for all costs. The entire process cost us roughly £60,000

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

While there is a genetic link between our daughter and my partner, I do not believe that should be a requirement. It is not genetics that makes a parent. A parent is someone who cares for and is responsible for a child.

Please provide your views below:

It should be removed in all circumstances.

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

I believe this will greatly increase accessibility. I think acknowledging and regulating what is already happening will give many people who might otherwise be afraid of not having legal recourse in case things don't go well the confidence to go ahead.

Allowing surrogates to legally be paid for surrogacy will increase the chances of people finding someone willing to be a surrogate.

Allowing agencies to charge to match people will also increase the number of surrogacy cases.

Allowing parents and surrogates to have the intended custody of a child at birth will encourage a lot of people to move forward with surrogacy. I don't think we would have gone ahead with it because of this clause if we hadn't been working with a very close friend as our surrogate.

There are countless other reasons to simplify and legalise the process that will encourage a practice that's already happening to grow, and in a legal way that protects all involved.

Please provide your views below:

124 Consultation Question 116:

domestic; or

Please provide your views below:

£3000

I don't regret making this surrogacy agreement - it was good to know that we were all on the same page before starting. But, I do think this is a lot of money to spend on a document that is not even legally binding.

Please provide your views below:

Savings over several years.

Please provide your views below:

£50,000

Two failed surrogacies and one surrogacy agency that didn't deliver a surrogate, but took a huge non-refundable deposit.

Please provide your views below:

Savings from earnings over several years.

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response
- This is a response on behalf of an organisation
- Other

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Surrogate
- Intended parent

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:



7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

- 1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

- 1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

- 1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;

- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit.

There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-YJ9D-5

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-12 18:31:15

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

domestic surrogacy cases which continue to require a post-birth parental order should continue to be 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:

Yes

Please provide your views below:

15 Consultation Question 8:

Yes

Please provide your views below:

100 years; or

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

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:

No

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:

No

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:

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 proceed in the new pathway.

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:

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:

24 years ago we embarked on surrogacy as intended parent and are now proud parents of a fantastic young man aged 23, embarking on his career [REDACTED]. His surrogate mother has an older and younger boy plus became the surrogate mother to a girl who is now 22 and in her 3rd year at medical school. We are all in regular touch and the whole extended family meet up at least annually.

We all undertook independent counselling and initial health screening before embarking on what has (and is) the most wonderful experience for us all.

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

Other

Please provide your views below:

But with the proviso that it does not 'price some parents out of the market'

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:

This will price people out of the chance of fulfilling what is, after all, a basic human need - to procreate. There is no such pressure on other groups of intending parents who are far less fit to become decent parents e.g. drug or other substance abusers.

The evidence is increasing that children born through less traditional methods such as surrogacy are loved and looked after by their intended parents at least as well (if not better) than children resulting from sex between a man and a woman ... their life outcomes may well be superior to 'haphazard parenting' due to the fact that they know above all else that they were truly wanted and planned for.

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 will price people out of the chance of fulfilling what is, after all, a basic human need - to procreate. There is no such pressure on other groups of intending parents who are far less fit to become decent parents e.g. drug or other substance abusers.

The evidence is increasing that children born through less traditional methods such as surrogacy are loved and looked after by their intended parents at least as well (if not better) than children resulting from sex between a man and a woman ... their life outcomes may well be superior to 'haphazard parenting' due to the fact that they know above all else that they were truly wanted and planned for.

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:

No sanctions because I don't believe we should regulate this in the way proposed.

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:

see above

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:

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:

I agree with the question

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

(1) where his or her legal parents have consented;

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

There should be 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.

59 Consultation Question 51:

Yes

Please provide your views below:

This provision should avoid the issue raised in Q58

Please provide your views below:

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.

60 Consultation Question 52:

Please provide your views below:

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

Please provide your views below:

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

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:

For surrogacy arrangements outside the new pathway, details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

Agree

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:

at least 5 years residency

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:

I agree that DD should be permitted under POP

Yes

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Yes

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

Please provide your views below:

A medical letter should suffice

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

Yes

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

No Max age limit

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:

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?

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:

We pay everyone for providing a service - the monies paid to a surrogate should remain strictly between her and the intending parents.

81 Consultation Question 73:

Please provide your views below:

We pay everyone for providing a service - the monies paid to a surrogate should remain strictly between her and the intending parents and include all costs. The 'essential costs' should be agreed between them all and no-one else should dictate.

82 Consultation Question 74:

Please provide your views below:

We pay everyone for providing a service - the monies paid to a surrogate should remain strictly between her and the intending parents and include all agreed costs. The 'essential costs' should include all 'additional costs' agreed between them all and no-one else should dictate. It's no one else's business.

83 Consultation Question 75:

Please provide your views below:

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 these types of costs should be the sole business of the intending parents and the 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:

Yes ANY lost earnings should be paid. 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 these costs should be the sole business of the intending parents and the surrogate

85 Consultation Question 77:

Please provide your views below:

Yes ANY potential lost earnings should be paid. 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 these costs should be the sole business of the intending parents and the surrogate

86 Consultation Question 78:

Please provide your views below:

All earning should be declared to the proper authorities by the surrogate

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:

intended parents should be able to pay compensation to the surrogate for these conditions

Please provide your views below:

We pay everyone for providing a service - the monies paid to a surrogate should remain strictly between her and the intending parents and include all agreed costs

left to the parties to negotiate.

Please provide your views below:

We pay everyone for providing a service - the monies paid to a surrogate should remain strictly between her and the intending parents and include all agreed costs. No maximum set by the regulator.

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 - get it agreed before you start.

89 Consultation Question 81:

Please provide your views below:

Yes - strictly between the 3 parties involved. It's no one else's business

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:

We pay everyone for providing a service, including those sat debating whether a surrogate should be paid ... !! You demean her by not paying for the most wonderful service a woman can provide. Pay her, agree the amount in advance. It should be private between the 3 parties involved.

any sum agreed between the parties to the surrogacy; or

Please provide your views below:

We pay everyone for providing a service, including those sat debating whether a surrogate should be paid ... !! You demean her by not paying for the most wonderful service a woman can provide. Pay her, agree the amount in advance. It should be private between the 3 parties involved.

essential costs relating to the pregnancy;; additional costs relating to the pregnancy;; lost earnings;; compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or, gifts.

Please provide any views below:

We pay everyone for providing a service, including those sat debating whether a surrogate should be paid ... !! You demean her by not paying for the most wonderful service a woman can provide. Pay her, agree the amount in advance. It should be private between the 3 parties involved.

91 Consultation Question 83:

Please provide views below:

No reduction - you are paying for a service/renting a womb. You are not buying a baby.... The price of a baby is beyond filthy lucre.

Not Answered

Please provide your views below:

The costs negotiated by the 3 parties would of necessity be itemised and agreed between them and some of those costs to the intending parents would only be due for payment in the later stages therefore as long as there is openness and clarity (and a written note between the parties) there may be some costs that would not be paid in an early loss of a pregnancy, but these would be a small proportion of the whole.

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 think payment in both eventualities should be the sole business of the surrogate and the intending parents

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 think payment should be the sole business of the surrogate and the intending parents

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 think payment should be the sole business of the surrogate and the intending parents

95 Consultation Question 87:

Please provide your views below:

NO. I think payment should be the sole business of the surrogate and the intending parents

96 Consultation Question 88:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Not Answered

Please provide your views below:

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Not Answered

Please provide your views below:

107 Consultation Question 99:

Not Answered

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

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:

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 other purposes where a parent would usually take time off work

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:

... maybe if the intending parent is lactating but I can't see any other reason that would require additional rest/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 provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

My child born of a surrogate is now 23 and at the time the midwives disallowed me attending the birth (although I had the birth mothers permission) and insisted my poor surrogate stayed in the delivery suite all night - mental torture for her. The next day the ward nurses then tried to prevent us from collecting our new born even though we had been called in to do so by his birth mother. I sincerely hope that this does not happen to-day. PS I am a fully qualified nurse and could not believe that nurses could be so judgmental and inflict such harm upon sentient beings who had entered into a happy agreement. PS we all still meet up at least twice a year and 'everyone knows everything'.

Please provide your views below:

Please provide your views below:

If everyone is open and in agreement - the notes should reflect this agreement and there should be no issues. It is no-ones business except the 3 parties involved

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:
1996

domestic; or

If international, in which country did the arrangement take place?:

Yes

(a) opposite-sex couple;

118 Consultation Question 110:

domestic; or

Yes

Yes

Please provide the cost of any legal advice or representation below:

£1000

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:

It was hugely stressful that the guardian ad litem () had no experience of surrogacy and expressed strongly the view that we should not involve the birth mother in our child's future and that she could just 'turn up' at any point and ask to see him. She also visited the surrogate mother and repeatedly asked questions about her motivation and if she 'really wanted to go-ahead' with the arrangement. This led to unnecessary court costs.

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:

domestic; or

Please provide your views below:

Please provide your views below:

Please provide your views below:

£25000 - no baby

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:

From: [REDACTED]
To: [surrogacy](#)
Subject: Response to the Surrogacy Consultation
Date: 01 October 2019 12:30:00

Dear Surrogacy Consultation team, Law Commission,

Please find attached my responses, as an individual, to the Surrogacy Consultation with my comments, below.

Kind regards,

[REDACTED]

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

NA

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

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.

My personal opinions and personal details should not be shared outside of those working on the consultation. I do not give permission to publish any or part of this feedback online or in printed material unless my name has been removed.

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

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and risks possible exploitation of women living in poverty. 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. The birth mother should retain the right to stay with the child, if it is her wish, for her mental health and for the benefit of the child, for example if the child was breastfeeding, or required colostrum or breastmilk for health benefits, directly or if expressed.

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.

Pregnancy and childbirth are known to be very difficult physically, they are a time in a woman's life where hormones dictate her emotional state. 'Baby brain' is a term often used in regards to forgetfulness and a woman can suffer from a lack of sleep so extreme that she can be a danger when driving. Making decisions that have a life-long impact for her child and for herself at a time when she is not of sound mind or when her well-being is compromised is simply taking advantage of someone when they are not themselves.

* <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.

I am concerned that the Department of Health has been the source by which the decision to amend existing laws has been made and that this has not been instigated by the Women and Equalities department or by the Department for Children, Schools and Families.

Surrogacy arrangements which are recorded (and all should be recorded and done legally) should be kept by the Registrar's office as supplementary historical records to be added to birth certificates.

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. Studies note the '4th trimester' in the life of newborn babies. 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

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-12 21:20:30

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

N/A

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Other

Please provide your views below:

I'm afraid my personal view is that surrogacy should be banned all together.

I don't believe that humans have the "right" to become parents - it is a privilege and we should respect Nature/God if we cannot conceive naturally.

Children are not a commodity that can be bought or sold - that is simply slavery and I thought all nations agreed that that was an abominable practice.

Likewise, women's bodies shouldn't be for "rent".

Just because we "can" do something, doesn't mean we necessarily "should" do it.

Medical science and advances have been incredible but I do believe that surrogacy/IVF are humans "playing God".

Maternal rejection is a huge burden for a child to bear - why put that emotional strain on any human?

This can create so many potential issues - what if the child is created by a donated sperm and egg - then the "intended" parents get divorced at some point in the future - will the child feel they "belong" in the family? Could they be rejected by one or both parents?

We are asking for trouble by allowing this vile practice to continue.

Please provide your views below:

As above

9 Consultation Question 2:

Please provide your views below:

Please see my original answer

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:

Please see my original answer

11 Consultation Question 4:

Other

Please provide your views below:

Please see my original answer

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:

Please see my original answer

13 Consultation Question 6:

Please provide your views below:

Please see my original answer

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Other

Please provide your views below:

Please see my original answer in Chapter 6

15 Consultation Question 8:

Other

Please provide your views below:

Please see my original answer in chapter 6

Not Answered

Please provide your views below:

Please see my original answer

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:

As before

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:

Please see my original answer

18 Consultation Question 11:

Other

Please provide your views below:

Please see my original answer

19 Consultation Question 12:

Other

Please provide your views below:

Please see my original answer

20 Consultation Question 13:

Other

Please provide your views below:

Please see my original answer

21 Consultation Question 14:

Other

Please provide your views below:

Please see my original answer

22 Consultation Question 15:

Other

Please provide your views below:

Please see my original answer

Other

Please share your views below:

Please see my original answer

23 Consultation Question 16:

Other

Please provide your views below:

Please see my original answer

Other

Please provide your views below:

Please see my original answer

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:

Please see my original answer

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:

Please see my original answer

26 Consultation Question 19:

Not Answered

Please provide your views below:

Please see my original answer

Please provide your views below:

Please see my original answer

27 Consultation Question 20:

Other

Please provide your views below:

Please see my original answer

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:

Please see my original answer

29 Consultation Question 22:

Please provide your views below:

Please see my original answer

30 Consultation Question 23:

Please provide your views below:

Please see my original answer

31 Consultation Question 24:

Please provide your views below:

Please see my original answer

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:

Please see my original answer

33 Consultation Question 26:

Other

Please provide your views below:

Please see my original answer

34 Consultation Question 27:

Other

Please provide your views below:

Please see my original answer

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:

Please see my original answer

36 Consultation Question 29:

Please provide your views below:

Please see my original answer

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:

Please see my original answer in chapter 6 and take it as read that that is my answer for each and every question in this Chapter, thank you.

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?

Other

Please provide your views below:

Please see my original answer in Chapter 6 and take it as read that that is my answer to every single question in this chapter.

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:

Please see my original answer in Chapter 6 and take it as read that that is my answer to every single question in this chapter, thank you.

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:

Other

Please provide your views below:

Please see my original answer in Chapter 6 and take it as read that that is my answer to every single question in this chapter, thank you.

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:

Other

Please provide your views below:

Please see my original answer in Chapter 6 and take it as read that that is my answer to every single question in this chapter, thank you.

Please provide your views below:

75 Consultation Question 67:

Not Answered

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Not Answered

Please provide your views below:

77 Consultation Question 69:

Not Answered

Please provide your views below:

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

Please see my original answer in Chapter 6 and take it as read that that is my answer to every single question in this chapter , thank 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 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:

Please see my original answer in Chapter 6 and take it as read that that is my answer to every single question in this chapter, thank you.

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:

Please see my original answer in Chapter 6 and take it as read that that is my answer to every single question in this chapter, thank you.

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

Please see my original answer in Chapter 6 and take it as read that that is my answer to every single question in this chapter too, thank you.

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:

Law Commission Surrogacy Consultation

Consultation Response

The Mission & Public Affairs Council of the Church of England is the body responsible for overseeing research and comment on social and political issues on behalf of the Church. The Council comprises a representative group of bishops, clergy and lay people with interest and expertise in the relevant areas, and reports to the General Synod through the Archbishops' Council.

The Mission and Public Affairs Council presents a Christian ethos, drawing on the witness of the Christian Scriptures and reflecting on Christian tradition and contemporary thought. Belief in God as Creator and Redeemer, in human beings' intrinsic value as creatures made in the Image of God and in the imperatives of love and justice, underpins the Council's approach. The Council believes that the ethical and social principles developed from this foundation have a value and relevance in society that can be acknowledged by those of other faiths or none.

Introductory Comment

We are pleased to respond to this consultation and we note its remit which does not include discussion of surrogacy per se or the range of circumstances for which surrogacy arrangements ought to be permissible.

We have responded in kind; no conclusions either positive or negative ought to be drawn regarding our views on these particular issues from the responses below which focus primarily on pastoral concerns, highlighting the best interests of children and the care and wellbeing of surrogate mothers and intended parents.

Consultation Question 1.

Paragraph 6.42

We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and
- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Response:

In order to safeguard international surrogacy arrangements and to assist consistency of approach, we agree with the comments of High Court judges recorded in the consultation paper (paragraph 6.38) that all international surrogacy cases should continue to be heard by them and that the current system of allocation of surrogacy cases to a small number

of full-time High Court judges allows these judges to build up a considerable level of expertise in this area of law. We also agree with their expressed concern at the prospect of these cases being heard by other courts. We accept that the High Court, through its reported judgments, can also develop case law in a way that lower courts cannot.

If some international surrogacy arrangements were to be allocated to circuit judges, we believe that it is essential that only ticketed judges should be allocated such cases and that they each have a nominated High Court judge as a mentor.

Consultation Question 2.

Paragraph 6.51

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.

Response:

Cases where intended parents and surrogate mothers continue to use the post-natal parental order system are likely either to have had less independent input and scrutiny or to be more complex than those cases where the new proposed system is followed. For these reasons, we believe that they ought to be heard at a higher level of the judiciary than lay justices.

Such cases are likely to be less complex than international surrogacy arrangements although it is important that a core group of judges is used in order for them to build up expertise in this area and to build up a body of case law. For these reasons we suggest that ticketed circuit court judges should hear such cases.

Consultation Question 3.

Paragraph 6.53

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.

Response:

We have nothing further to add to the information supplied in the consultation document.

Consultation Question 4.

Paragraph 6.58

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).

Response:

We believe that it is in the best interests of children to be living, where possible, with their intended parents. If this does not become the case automatically, we believe that the court should be under an obligation to consider making an order awarded intended parents parental responsibility at the first available opportunity, i.e. at the first directions hearing.

Consultation Question 5.

Paragraph 6.72

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?

Response:

We agree, subject to the conditions set out in paragraph 6.71 that the practice in England and Wales should reflect the practice in Scotland, in effect reversing the above rule.

Consultation Question 6.

Paragraph 6.110

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.

Response:

This question is beyond our remit.

Consultation Question 7.

Paragraph 8.13

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?

Response:

We believe that it is in the best interests of children to live with their intended parents as soon as possible after birth and that the legal status of their parents should be settled as soon as is practicable. In cases where the above conditions have been met, we believe that it is desirable that the intended parents should be the legal parents at birth.

We accept that this will best reflect the experience of almost all recent surrogacy arrangements, but we believe that it is important that surrogate mothers retain a right to object.

It is unclear to us, however, what the legal status of intended parents would be in cases where legal parenthood has been granted at birth, but the surrogate mother objects subsequently within the proposed 'defined period'.

Consultation Question 8.

Paragraph 8.14

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?

We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Response:

We believe that it is essential for the good working of the proposed new pathway that regulated surrogacy organisations and licensed clinics keep full and accurate records of all arrangements to which they are a party.

We believe that children born following surrogacy arrangements should be able to have access to full information regarding their births at any point in their adult lives. In 2018 there were 13,170 centenarians in the UK with this figure likely to rise in subsequent years (Office of National Statistics). For this reason, we believe that a period of 100 years is too low to ensure access to information for everyone. As, to date, the longest verified time a UK citizen has lived is 115 years, we recommend that records are kept for a period of 120 years.

Consultation Question 9.

Paragraph 8.21

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?

Response:

While it is possible for children to be born from anonymously donated gametes in international non-surrogacy arrangements, we believe that it is best practice for the identity of donors to be known and recorded both for reasons of maternal and child health and for enabling children to gain access to full information regarding conception and birth. For these reasons, we believe that regulated surrogacy organisations should not be permitted to assist surrogacy arrangements involving anonymously donated gametes.

Consultation Question 10.

Paragraph 8.22

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.

Response:

Yes, for the reasons stated above. This does not preclude intended parents and surrogate mothers from pursuing the parental order pathway.

Consultation Question 11.

Paragraph 8.35

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?

Response:

The rights of surrogate mothers ought to be safeguarded and while it is very rarely the case that surrogate mothers do not continue with surrogacy arrangements, it is essential that all surrogate mothers are protected from coercion as well as them being able to exercise freedom of choice in all circumstances.

The right to object during a defined period better protects surrogate mothers' rights than the alternative suggestion of surrogate mothers legally consenting at birth.

At the same time, it is clearly in children's best interests to have legal parenthood and living arrangements fixed as soon as is practicably possible.

In order to comply with current regulations in England, births must be registered within 42 days; a 'defined period' of birth registration less one week is therefore reasonable and we agree with it.

Consultation Question 12.

Paragraph 8.36

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?

Response:

Yes; the above synopsis represents the optimal way of acting in children's best interests.

Consultation Question 13.

Paragraph 8.37

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?

Response:

This grants too much authority to the intended parents who (albeit in very rare cases) might wish to conceal any lack of capacity on the part of the surrogate mother. We prefer that such a statement should be provided by the surrogate mother's GP, removing both intended parents and surrogate mothers from making what is essentially a medical judgement. We accept that this will add an extra administrative layer to the pathway, but it will also add an extra safeguard. GPs would be asked to state 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'; they would not be asked to make an active assessment of capacity.

Consultation Question 14.

Paragraph 8.51

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?

Response:

We agree that all welfare assessments ought to be completed prior to a child's birth and that all child health and welfare issues are then dealt with in the normal way by health visitors and social workers.

Consultation Question 15.

Paragraph 8.57

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.

Response:

We believe that a decision to become a surrogate mother belongs to each woman alone even though she may seek counsel from others and might seek agreement from a spouse or partner. Such agreement ought not legally to confer parental rights or responsibilities. This ought to be reflected in all surrogacy arrangements.

In rare cases where a surrogate mother objects to the intended parents' acquisition of legal parenthood at birth and where the court decides that she should retain custody of the child, it is possible for her spouse or partner subsequently to pursue legal adoption of the child.

Consultation Question 16.

Paragraph 8.77

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?

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?

Response:

While surrogate mothers ought to retain full maternal rights during pregnancy, a stillbirth represents a tragic end to a pregnancy rather than a part of pregnancy. As the births of stillborn children must be registered, it is reasonable for the surrogacy arrangement to imply that the intended parents are registered as legal parents, subject to the same rights of objection as in cases of live births. This ought to extend also to surrogacy arrangements outside the proposed new pathway as outlined above.

Consultation Question 17.

Paragraph 8.79

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?

Response:

Yes

Consultation Question 18.

Paragraph 8.80

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.

Response:

The rationale behind the proposed new pathway suggests that once a surrogacy arrangement has been agreed, subject to the relevant criteria, the expectation is that the intended parents will become the legal parents at birth. In tragic cases where a surrogate mother dies in childbirth or before the end of the 'defined period', this expectation ought not to be affected. We believe that there is no need for the intended parents to be required to change from the proposed new pathway to the parental order pathway.

Consultation Question 19.

Paragraph 8.81

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?

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.

Response:

Given that the rationale of the proposed new pathway is to enable intended parents to be recognised as legal parents on a child's birth, subject to the surrogate mother's right to object, it is reasonable for them to be recorded as a child's legal parents even if they have died prior to the child's birth. It is already the case that deceased fathers are recorded on birth certificates as are mothers who have died during childbirth. This recognition should be extended to cover all surrogacy arrangements.

Consultation Question 20.

Paragraph 8.86

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?

Response:

Yes

Consultation Question 21.

Paragraph 8.91

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.

Response:

We believe that a temporary three-parent model of legal parenthood in surrogacy cases is inferior to the proposed new pathway. It is more cumbersome and complex than the proposed model in cases where the surrogacy arrangement proceeds as intended and it has potential to create added stress to surrogate mothers by requiring them to *relinquish* legal parenthood. It adds nothing positive to cases where surrogate mothers challenge the intended parents' status as legal parents as, in both systems, the case will be referred to the court for decision.

Consultation Question 22.

Paragraph 8.93

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.

Response:

The proposed new pathway is designed to meet the needs of the majority of surrogacy arrangements which proceed as intended. Where such arrangements fail to work as intended because a surrogate mother exercises her right to object, the court will automatically become involved in a manner similar to the parental order pathway. If all the criteria of the new proposed pathway are met and all required steps are taken, it is not necessary to add a further layer of administrative or judicial oversight.

Consultation Question 23.

Paragraph 8.120

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.

Response:

Even though a recent Court of Appeal judgement (paragraph 8.117) clarified existing practice rather than creating new specific factors to be taken into account it is reasonable, in the light of this that the Children Act should be amended accordingly.

The factors identified by the Appeal Court detail the additional factors: the child's gestational and legal parentage, his or her genetic relationships and the manner in which the intended surrogacy came about.

Consultation Question 24.

Paragraph 8.121

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.

Response:

Please see our answer to Question 23

Consultation Question 25.

Paragraph 8.123

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.

Response:

We believe that it is the best interests of children that all issues of legal parenthood and living arrangements are concluded as promptly as possible. To that end, it is preferable that the Children Act is amended to enable intended parents to apply for a section 8 order without first having to seek leave of the court.

Consultation Question 26.

Paragraph 8.132

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?

Response:

It is the best interests of children to have their future family arrangements settled as promptly as possible. In cases where a child is already living with intended parents who also intend to apply for a parental order it is right for those parents to automatically acquire parental responsibility as, in all but the most unlikely of cases, a parental order will subsequently be granted.

Consultation Question 27.

Paragraph 8.134

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?

Response:

In the circumstances described above, it is in the best interests of the child to remain with the intended parents, pending a court decision, particularly in the light of the history of the court favouring parental orders in such cases.

Consultation Question 28.

Paragraph 8.139

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?

Response:

Paragraph 8.134 proposes that the intended parents are given parental responsibility while paragraph 8.139 proposes that the surrogate mother retains parental responsibility during the ‘defined period’. This ‘shared’ parental responsibility has the potential to lead to unnecessary confusion and conflict. It is preferable for the intended parents to be given parental responsibility alone: if the surrogate mother exercises her right to object, the court can revisit this decision.

Consultation Question 29.

Paragraph 8.140

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.

Response:

We believe that it is preferable for intended parents to be given sole parental responsibility in order to avoid confusion such as outlined in our answer to Question 28.

Consultation Question 30.

Paragraph 9.29

We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

Response:

As the intention of the proposed new pathway is to reflect current practice in order to achieve the best interests of children, traditional surrogacy arrangements ought to fall within its scope: the surrogacy arrangement is the key factor; not the nature of the genetic relationships involved.

Consultation Question 31.

Paragraph 9.35

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.

Response:

N/A

Consultation Question 32.

Paragraph 9.36

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.

Response:

It is preferable for all surrogacy arrangements to be brought within the scope of the proposed new pathway because of the level of support and oversight that this provides. It is not possible to achieve this other than through persuasion. If surrogate mothers and intended parents choose not to follow this pathway, it will still be in the best interests of children for the court to grant parental orders. It is also not in children's best interests to criminalise either their surrogate mothers or intended parents.

Consultation Question 33.

Paragraph 9.61

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?

Response:

There ought to be regulated surrogacy organisations. As long as they adhere to consistent agreed standards and regulations and are efficiently monitored there ought to be any requirement for them to conform to a particular form or model.

Consultation Question 34.

Paragraph 9.62

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?

We invite consultees to identify any other responsibilities which a responsible individual should have.

We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

Response:

We agree with the responsibilities listed above. Given the range of skills needed and the complexity of issues involved, we recommend that a 'responsible individual' ought to be a recognised legal, healthcare, social work or management professional with degree-level or equivalent qualifications and a minimum of five years post-qualification experience.

Consultation Question 35.

Paragraph 9.84

We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

Response:

We strongly agree. In order for surrogate mothers and intended parents to be protected from commercial exploitation, surrogacy arrangements ought never to become opportunities for individuals, businesses or organisations to seek profits.

Consultation Question 36.

Paragraph 9.94

We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Response:

We agree with the list of services in paragraph 9.86 and suggest adding ‘provide ongoing support to surrogate mothers who remain on the organisation’s register’.

We also believe that matching and facilitating services should go further than ‘providing advice and support to surrogates and intended parents’ (paragraph 9.86), but should also include monitoring and reporting functions that record if/when surrogate mothers and intended parents have fulfilled the criteria for their arrangements to be included in the proposed new pathway.

Consultation Question 37.

Paragraph 9.95

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.

Response:

We strongly agree that only regulated surrogacy organisations should be permitted to offer matching and facilitation services, both within and outside the proposed new pathway. This is important to ensure a duty of care to both surrogate mothers and intended parents and to minimise the risk of people-trafficking. This will not affect private arrangements from continuing, but it will regulate all groups that seek to provide this important, sensitive and complex range of services.

Consultation Question 38.

Paragraph 9.97

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.

Response:

We agree that it is important that parental orders or the granting of legal parenthood at birth to intended parents ought not to be hindered because an unregulated organisation was involved in the process; that would not be in children’s best interests. Nevertheless, all organisations providing services or participating in surrogacy arrangements have a duty of care to all involved which requires regulation and monitoring. We believe that organisations which provide unregulated services should be liable to criminal sanctions, subject to the usual evidential and public interest prosecution criteria. These should vary from fines at the lower end of the scale to imprisonment for offences that involve people-trafficking or coercion (such cases are likely to be rare, but provision ought to be made for them).

Consultation Question 39.

Paragraph 9.117

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?

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.

Response:

We agree that, given the relatively small numbers of current surrogacy arrangements and the projection that they are not likely to rise above five hundred per year, it is not practical to form a new regulatory body. In this situation the HFEA is the only feasible option available.

We suggest that the simplest way to amend the HFEA Code of Practice is to expand section 14 to include details of both the proposed new pathway and the parental order pathway and to add a new sub-section dealing with regulated surrogacy organisations that set out the provisions outlined in paragraphs 9.54-9.57 of the consultation document. In addition, regulations relevant to matching and facilitating and requirements for regulated surrogacy organisations to provide monitoring and reporting functions as outlined in our answer to Question 36 should be included.

We also suggest that the HFEA Code of Practice is amended to cover advertising by regulated surrogacy organisations (Question 42).

Consultation Question 40.

Paragraph 9.129

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?

Response:

We agree that, subject to the exception noted above, surrogacy arrangements should be unenforceable (*as defined in paragraph 4.12 of the consultation document*) for the reasons outlined in paragraphs 9.120-9.128 of the consultation document.

Consultation Question 41.

Paragraph 9.135

We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

Response:

We agree, subject to the conditions outlined in paragraph 4.23 of the consultation document. We also believe that ‘reasonable payments’ to non-profit organisations requires further explanation with a possible ‘cap’ being set for individual services.

Consultation Question 42.

Paragraph 9.145

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?

Response:

We agree that advertising ‘anything that can lawfully be done’ ought to be permitted both because enforcing the current law has been impossible to execute and because UK advertising has the potential to encourage intended parents to pursue domestic rather than (unregulated or poorly regulated) international surrogacy arrangements. We note that the law currently permits some exceptions for non-profit organisations.

We suggest that regulated surrogacy organisations’ advertising ought to be subject to regulation by the HFEA.

Consultation Question 43.

Paragraph 10.80

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?

Response:

Yes (to mirror existing adoption legislation)

Consultation Question 44.

Paragraph 10.85

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?

Response:

Yes, we believe that this is in the best interests of children as outlined in paragraph 10.78 of the consultation document.

Consultation Question 45.

Paragraph 10.87

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.

Response:

We believe that the current birth registration system in England and Wales ought to be revised to take account of present-day realities occasioned by advances in assisted fertility and changed practices in areas such as surrogacy and co-parenting. Full birth certificates ought to provide as much information on genetic and gestational origins as possible, consistent with the right to privacy of donors as outlined by HFEA regulations (amended 2005).

Consultation Question 46.

Paragraph 10.89

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?

Response:

Yes, we believe that this is in the best interests of children.

Consultation Question 47.

Paragraph 10.102

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?

Response:

We agree with all of the above, subject to (b) being referenced to the HFEA's existing regulations in this area.

Consultation Question 48.

Paragraph 10.104

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.

Response:

We believe that identifying information ought to be recorded as outlined in Questions 47 (a), but that non-identifying information ought also to be recorded for access by children between the ages of 16 and 18.

Consultation Question 49.

Paragraph 10.110

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.

Response:

We believe that children aged 16 (non-identifying information) and 18 (identifying information) ought to have access to all recorded information on the condition that they have been offered counselling. Access ought not to be denied if counselling is declined or legal parents have not consented as this would undermine their right to make decisions with regard to their own welfare.

Consultation Question 50.

Paragraph 10.114

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.

Response:

We believe that this is a reasonable request, but that no other information ought to be given including whether or not an intended partner was born following a surrogacy arrangement with a different mother.

Consultation Question 51.

Paragraph 10.121

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.

Response:

We believe that provisions should be made for both circumstances outlines above, but emphasise that both parties must wish to be identified.

Consultation Question 52.

Paragraph 10.123

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.

Response:

While acknowledging the possibility of the surrogate mother's other children not wishing to be identified or to know of the identity of a child born through a surrogacy arrangement, on balance we believe that such access ought to be permitted in both circumstances outlined above as such information might also be gained through contact between the surrogate mother and the child born through a surrogacy arrangement.

Consultation Question 53.

Paragraph 10.128

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.

Response:

We believe that it would be very difficult to gain compliance for this provision and we are also not convinced that it would be in the best interests of children to discover as adults that there had once been another intended parent.

Consultation Question 54.

Paragraph 11.20

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?

Response:

In the light of Case Law that has in effect amended the HFEA 2008 as well as in the best interests of children, we believe that the six-month time limit should be abolished. Nevertheless, it is in the best interests of children that parental orders should be settled as soon as possible so we agree that all parties should be encouraged to act in a timely manner.

Consultation Question 55.

Paragraph 11.58

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?

Response:

Yes

Consultation Question 56.

Paragraph 12.15

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?

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.

Response:

We agree that *either* being domiciled or being habitually resident ought to qualify intended parents for UK surrogacy arrangements.

In order to offset the possibility of 'surrogacy tourism' and other concerns, we propose that to qualify as being habitually resident, at least one of the intended parents must live in the UK for a defined period prior to the surrogacy arrangement being made (a period of six months to a year seems reasonable).

Consultation Question 57.

Paragraph 12.29

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.

Response:

We believe that option (2) represents the best way forward, given the current complexities created by case law and the possibility of further complexities in the future.

Consultation Question 58.

Paragraph 12.34

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?

Response:

Yes, this is in the best interests of children.

Consultation Question 59.

Paragraph 12.64

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?

Response:

We believe that medical necessity is the only round for permitting double-donation both because it is difficult to see what other valid reason might be given and because it is likely to be in the best interests of children to know (where possible) that they are genetically related to at least one intended parent. Given the difficulties associated with overseeing international surrogacy arrangements, this exception ought only to be available for domestic surrogacy arrangements.

Consultation Question 60.

Paragraph 12.71

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?

Response:

Yes

Consultation Question 61.

Paragraph 12.76

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?

Response:

We accept that there might be some exceptional cases where an intended parent who provides gametes under the parental order pathway does not wish (or is not able) to apply for a parental order; in such circumstances, the non-donor intended parent ought not to be precluded from attaining a parental order.

Consultation Question 62.

Paragraph 12.94

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.

Response:

For the reasons outlined in paragraph 12.80 of the consultation document, we agree that surrogacy arrangements in both pathways ought to be restricted to cases of medical necessity. We also agree with the sentiments of paragraph 12.93 of the consultation document that 'medical necessity' ought to cover mental and psychological as well as physical health issues.

In particular, intended parents utilising the proposed new pathway ought to obtain a statement from their GP or other doctor to the effect that there is a medical necessity that can only be addressed through surrogacy.

In assessing mental and psychological 'necessity' it is important that only genuine health concerns rather than social factors or personal choice are considered.

Consultation Question 63.

Paragraph 12.115

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?

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.

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?

Response:

We agree with all of the above proposals.

Consultation Question 64.

Paragraph 12.133

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?

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.

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?

Response:

As with other issues associated with surrogacy arrangements, the welfare of children must be paramount. There are both advantages and disadvantages for children in having 'older' parents, but the balance is tipped towards disadvantage as the age of intended parents increases. Foremost of these are the likelihood of parental death, chronic illness (and attendant care needs) and worry about these on the part of children.

These are valid reasons for arguing that an upper-age limit of around 50 years of age would represent a reasonable upper age limit. We recognise, however, that this would not be consistent with some other practices in the area of assisted reproduction where age limits are not imposed and might not comply with human rights requirements, though we understand that this latter point is contestable.

If an upper age limit were not to be established, it is difficult to see how consistent guidelines could be set for either pathway. It is not possible to indicate for intended parents whether or not they will suffer illness or death while their children are minors; only a statistical analysis can be offered that cannot be applied to individuals.

On balance, we suggest that an upper age limit is set and that it is around 50 years of age.

We agree that a lower age limit of 18 years of age ought to be established for intended parents beginning the proposed new pathway.

Consultation Question 65.

Paragraph 12.144

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?

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?

Response:

We agree with both of these proposals.

Consultation Question 66.

Paragraph 13.16

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?

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.

Response:

We agree that the medical tests outlined in the consultation document ought to be required for surrogate mothers and intended parents in the proposed new pathway. We do not think that it is feasible to require medical testing for 'informal' surrogacy arrangements outside a licensed clinic. This is an added incentive to encourage as many intended parents and surrogate mothers as possible to adopt the proposed new pathway.

Consultation Question 67.

Paragraph 13.44

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?

Response:

We agree that surrogate mothers and intended parents should be required to attend counselling with a counsellor who meets the requirements outlined above, but while we believe that spouses, civil partners and partners ought to be offered counselling, their acceptance of this offer ought not to be a determining factor in the surrogacy arrangement going ahead. To permit this would be to infringe on a surrogate mother's right to make her own decisions.

Consultation Question 68.

Paragraph 13.65

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?

Response:

We are concerned that the costs of taking independent legal advice might represent a barrier to some intended parents, making surrogacy available only to those who are relatively well-off. At the same time, it is clearly in everyone's best interests that they are advised of the legal implications and limitations of surrogacy arrangements. On balance, we believe that such a requirement ought to be made, but that costs are kept to a minimum by setting a cap on associated fees (see also our answer to Question 118).

Consultation Question 69.

Paragraph 13.73

We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

Response:

We agree that an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates and that the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

Consultation Question 70.

Paragraph 13.95

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.

Response:

On balance, we agree with the reasoning outlined in paragraph 13.94 of the consultation document. We acknowledge that while most surrogate mothers will have given birth to previous children, this ought not to be an eligibility requirement for the proposed new pathway. In the relatively few cases where surrogate mothers will not have given birth previously, it is important that the potential implications of carrying a child as a surrogate mother without having children of her own is explored during counselling.

Consultation Question 71.

Paragraph 13.99

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?

Response:

While concerns related to physical and mental health of surrogate mothers as well as to ‘commodification’ of women’s bodies are valid, we believe that the criteria for the proposed new pathway address these issues adequately. They do, however, indicate that counselling and medical checks must be conducted thoroughly and not become simply part of an administrative exercise.

Consultation Question 72.

Paragraph 15.16

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.

Response:

Given the current unsatisfactory situation with regard to expenses as outlined in the consultation document, we agree that it is proper to introduce clear and workable regulations. We also note that, for altruistic reasons, many surrogate mothers do not require expenses to be paid. In order to retain flexibility and to enable and encourage altruistic surrogacy we believe that the payment of an agreed allowance (which might be less than actual costs) is the best way forward with regard to intended parents meeting costs.

Consultation Question 73.

Paragraph 15.22

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".

Response:

We believe that essential costs related to a surrogate pregnancy ought to be met by intended parents. 'Essential' costs relate directly or indirectly to the health and wellbeing of the surrogate mother and the child. The types of essential expenditure include vitamins and medicines, additional food, transport costs for appointments to medical and other related appointments (we view this as 'essential', not 'desirable' as suggested in paragraph 15.23 of the consultation document), dentist costs, sleeping aids, costs of additional scans, maternity, hospital and post-maternity clothes.

Consultation Question 74.

Paragraph 15.26

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.

Response:

We believe that some additional costs ought to be met by the intended parents and these could include such things as yoga or relaxation classes or costs associated with domestic assistance. We would not wish to be prescriptive with regard to this list, but believe that it should be agreed in advance by the surrogate mother and the intended parents and form part of the surrogacy agreement.

Consultation Question 75.

Paragraph 15.29

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.

Response:

We believe that intended parents should be able to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy (surrogate mothers may also decline some of this payment). Again, we do not want to be prescriptive, but such costs would include all expenditure incurred within the proposed new pathway and could include a recuperative holiday. We believe that such payments ought to stop with the statutory birth registration period in order to protect intended parents from unforeseen ongoing costs such as those incurred in enabling the surrogate mother to visit the intended parents and the child, particularly in cases where either party to the arrangement has moved a considerable distance away.

Consultation Question 76.

Paragraph 15.37

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).

Response:

We believe that intended parents should be permitted to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed). Care needs to be taken with regard to intended parents agreeing to pay loss of earnings in the event of injury or illness precluding the surrogate mother returning to work after the birth of the child. Such arrangements ought to be limited to a defined period extended no more than a few months to ensure that intended parents are not left with years of payments (see our answer to Question 80). They might also give rise to disagreements with regard to whether or not a surrogate mother is well enough to return to work. This is particularly acute in cases of post-natal depression. All of this needs to form part of the initial surrogacy agreement.

Consultation Question 77.

Paragraph 15.38

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).

Response:

We believe that those lost employment-related potential earnings defined in paragraph 15.35 ought to be payable, but those in paragraph 15.36 ought not to be as they are too speculative to estimate with any degree of accuracy.

Consultation Question 78.

Paragraph 15.47

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.

Response:

N/A

Consultation Question 79.

Paragraph 15.53

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.

19.103 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.

19.104 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.

Response:

We are uncomfortable with the concept of compensation as distinct from costs and expenses (as outlined above) being paid by intended parents and believe that agreement to pay such compensation would be difficult to quantify, particularly with regard to 'pain and inconvenience. We believe that (2) above properly belongs to 'costs arising from surrogacy arrangements' while, as we stated above, we do not believe that intended parents should be financially liable for long-term loss of earnings following illness or injury. We do agree that payment of life insurance and assurance contributions during

the surrogate mother's pregnancy are appropriate and could be treated as an exception. If compensation payments were permitted, a regulatory cap ought to be set.

Consultation Question 80.

Paragraph 15.56

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.

Response:

In the event of such a tragic occurrence, intended parent's liability for payment ought not to extend beyond payment of life assurance contributions. To agree otherwise is to create the possibility of the intended parents experiencing real poverty or bankruptcy, neither of which would be in the interests of children.

Consultation Question 81.

Paragraph 15.60

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.

Response:

We believe that it is reasonable for intended parents to buy surrogate mothers gifts, particularly in altruistic surrogacy arrangements. Such gifts ought to be 'modest or reasonable in nature'.

Consultation Question 82.

Paragraph 15.69

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.

Response:

We believe that while it is reasonable for surrogate mothers to receive costs and expenses as outlined in previous questions, it would be an error to permit payment to surrogate mothers for ‘the service of undertaking a surrogacy’.

At heart, surrogacy is an altruistic act aimed at helping intended parents to have a child when otherwise they would be unable to do so; anything that moves surrogacy away from this goal ought to be resisted. Permitting surrogate mothers to charge a fee for their services would negate the essentially altruistic nature of surrogacy even if, in practice, few women will choose this option.

Permitting a fee to be paid for surrogate mothers creates too great an opportunity for exploitation and coercion of women who might be abused by exploitative partners, family members, gangs or organised crime as a source of income, particularly in cases of people-trafficking.

While it could be argued that it is a woman’s choice whether or not to become a surrogate and consequently to charge a fee for her services, it is also the case that society has an obligation to state which sort of commercial services it deems to be ethical or lawful. We should not like to see the law colluding in the creation of a new profession: the professional surrogate.

We conclude that the full payment of costs and expenses as outlined in previous questions is the only form of payment that should be permitted.

If the law were to be changed to permit a fee for ‘the service of undertaking a surrogacy’ we believe that a fixed fee, covering and including all costs and expenses listed above is the option least open to exploitation.

Consultation Question 83.

Paragraph 15.72

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.

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).

Response:

We note that if costs and expenses only were permitted most of the financial implications of miscarriage or termination of abortion would not arise; another reason for not permitting a fixed fee.

If a fee were permitted, however, the fee ought to be reduced only where a termination of pregnancy takes place during the first trimester where it is unlikely that such a termination would occur for medical reasons and could represent a deliberate attempt to defraud intended parents (we emphasise that we believe that this would be a very rare occurrence).

As the consultation document notes, a fixed fee would be paid for surrogacy services (impregnation and gestation), not for the successful birth of a child that would enable intended parents to become legal parents as this would come too close to 'child-purchasing'. If a fee were to be permitted it would be paid for a woman to undergo the normal processes of pregnancy which, sadly, can include miscarriage. Under the provisions of the Abortion Act, the law permits a termination of pregnancy under certain circumstance; a surrogacy fee cannot be contingent upon the surrogate mother agreeing to eschew her legal rights, nor ought she to be penalised for exercising them.

Again, we strongly recommend that a 'surrogacy fee' is not permitted for these practical as well as for principled reasons.

Consultation Question 84.

Paragraph 15.74

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?

Response:

Yes

Consultation Question 85.

Paragraph 15.75

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.

Response:

No

Consultation Question 86.

Paragraph 15.76

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.

Response:

We have nothing further to add.

Consultation Question 87.

Paragraph 15.89

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.

Response:

We agree with the consultation document's consistent approach that criminalising either surrogate mothers or intended parents is not in the best interests of children and would also be difficult to pursue in practice.

We agree with the reasoning outlined in paragraphs 15.85-15.88 of the consultation document and would add that it ought to be part of a regulated surrogacy organisation's remit to record all payments made. Where either surrogate mothers or intended parents refused to comply with this, they would no longer be able to continue in the proposed new pathway and would transfer to the parental order pathway.

We cannot see, however, any effective way of enforcing limitations within the parental order pathway as it would not be in the best interests of children to withhold a parental order because of financial infringements.

Nonetheless, we are assured that such cases are likely to be rare given that most surrogacy arrangements are essentially altruistic in nature.

Consultation Question 88.

Paragraph 15.99

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?

Response:

A surrogate mother ought to receive full costs and expenses as outlined in previous questions; this ought to be the only enforceable part of a surrogacy arrangement.

While there are reasons for arguing that surrogate mothers ought to agree to refraining from activities that are likely to affect the health of any resulting children born under a surrogacy arrangement, we agree with the sentiments expressed in paragraph 15.98 of the consultation document that ‘to make the enforcement of payments conditional would, we think, represent an unjustifiable intrusion into the surrogate’s privacy and personal life’.

In practice, surrogate mothers are highly unlikely to engage in activities that might negatively affect the health of children. In any event, intended parents and surrogate mothers will spend some time getting to know one another and regulated surrogacy organisations will oversee resulting arrangements; any doubts regarding the suitability of surrogate mothers are very likely to be resolved prior to an arrangement being agreed.

Consultation Question 89.

Paragraph 16.10

We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Response:

N/A

Consultation Question 90.

Paragraph 16.12

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.

Response:

N/A

Consultation Question 91.

Paragraph 16.52

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.

Response:

N/A

Consultation Question 92.

Paragraph 16.53

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?

Response:

We agree with this proposal as the prompt settling of residency and nationality issues are in the best interest of children.

Consultation Question 93.

Paragraph 16.68

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.

Response:

N/A

Consultation Question 94.

Paragraph 16.69

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.

Response:

We agree with all of the above proposals as they are in the best interests of children. We also agree that the current six-month rule ought to be removed as this cannot always be adhered to and is, therefore, not in the best interest of children.

Consultation Question 95.

Paragraph 16.76

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?

Response:

We agree that this is in the best interest of children.

Consultation Question 96.

Paragraph 16.77

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.

Response:

N/A

Consultation Question 97.

Paragraph 16.82

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?

Response:

Yes

Consultation Question 98.

Paragraph 16.93

We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

Response:

Yes, as it would be impossible to facilitate, monitor and oversee all the criteria required in the proposed new pathway in international surrogacy arrangements.

Consultation Question 99.

Paragraph 16.94

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?

Response:

We believe that these proposals are in the best interests of children.

Consultation Question 100.

Paragraph 16.120

We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

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.

Response:

N/A

Consultation Question 101.

Paragraph 17.18

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.

Response:

In accordance with paragraphs 17.13 and 17.14 of the consultation document (particularly that paternity leave is intended, in part, to enable support of mothers), we believe that the current law requires reform.

Consultation Question 102.

Paragraph 17.32

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?

Response:

Yes. We also suggest that the law is changed either to allow intended mothers to be eligible for maternity leave or to amend adoption leave for intended mothers in surrogacy arrangements to give them the same relevant rights as mothers.

Consultation Question 103.

Paragraph 17.36

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.

Response:

We believe that is right for intended mothers to be given the same statutory rights as other mothers, including maternity leave (or amended adoption leave), maternity allowance and relevant ante-natal provision.

Consultation Question 104.

Paragraph 17.40

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.

Response:

We believe that a plain reading of 'nursing mother' includes intended mothers who are nursing a child; this appears to be borne out by the Health and Safety Executives commentary on the relevant laws: <http://www.hse.gov.uk/mothers/law.htm> .

Consultation Question 105.

Paragraph 17.43

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.

Response:

No

Consultation Question 106.

Paragraph 17.56

We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Response:

We do not believe that any change in the law is necessary for England and Wales (the law in Scotland is beyond our remit), but surrogate mothers under the parental order pathway ought to be encouraged to make or update their wills when they enter a surrogacy arrangement.

Consultation Question 107.

Paragraph 17.76

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.

Response:

It is often the case that there is a disparity between theory and practice in complex or relatively unusual care contexts, often exacerbated by a proliferation of dispersed guidance and policy documents. We suggest (within our remit) that NHS England is asked to look at the care of surrogate mothers, intended parents and children born within surrogacy arrangements with a view to producing unified and consistent policy and guidance documents and midwifery training recommendations.

Consultation Question 108.

Paragraph 17.80

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.

Response:

No

Consultation Question 109.

Paragraph 18.2

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.

Response:

N/A

Consultation Question 110.

Paragraph 18.4

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.

Response:

N/A

Consultation Question 111.

Paragraph 18.6

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.

Response:

We believe that this question is best answered only by those with personal experience in this area and so lies beyond our remit.

Consultation Question 112.

Paragraph 18.8

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).

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.

Response:

N/A

Consultation Question 113.

Paragraph 18.11

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.

Response:

We believe that this question is best answered only by those with personal experience in this area and so lies beyond our remit.

Consultation Question 114.

Paragraph 18.13

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.

Response:

N/A

Consultation Question 115.

Paragraph 18.15

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.

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.

Response:

N/A

Consultation Question 116.

Paragraph 18.18

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.

Response:

N/A

Consultation Question 117.

Paragraph 18.20

We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Response:

This is beyond our remit.

Consultation Question 118.

Paragraph 18.22

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.

Response:

We are concerned that intended parents who have very limited financial resources are precluded from surrogacy arrangements unless they are able to find a friend, family member or other person willing to engage in a purely altruistic arrangement. We believe that consideration ought to be given to making available a limited amount of public funding that, subject to mean-testing, could be utilised by such intended parents in a way similar to some NHS Trusts making IVF available free of charge.

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-13 17:55:11

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:

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 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:

Our son was born via an international surrogacy arrangement in Georgia on [REDACTED] Due to my husband being British by Descent we had to apply for British Citizenship for our child.

We employed a very experienced immigration solicitor to submit our application for citizenship. We were also extremely organised with all of the paperwork required for this application. From submission of our application to physically receiving the certificate of registration in Georgia it took 8 weeks.

We applied for the passport without the help of a solicitor. However it was extremely difficult to find out what documents the HMPO required for the passport despite repeated emails and phone calls over the period of one year. Each time we were referred back to very old and outdated guidance on the

HMPO website.

As a consequence of this information not being made publicly and easily available to access, inexperienced individuals without a legal or immigration background are now setting up private companies to sell this information to intended parents.

Out of desperation and fear we succumbed to such a company and paid a significant sum of money to obtain the list of documents that the HMPO accept for international surrogacy passport applications.

We feel very aggrieved that we had to resort to paying for information that should be in the public domain. Surely the government has a duty to ensure that such information is freely available to intended parents.

In addition frustratingly the fact that we had a British Citizenship certificate for our son did not speed up our passport application. Also the documents that we submitted for the passport application were almost an exact duplication of what we had to submit for the British Citizenship.

We submitted the passport application to HMPO on [REDACTED] and it then took a further 10 weeks for our son's passport to be issued.

In total we have had to spend 4.5 months in Georgia waiting for the British Citizenship and passport to be issued.

Whilst waiting for the passport we contacted HMPO every week to try and get an update on our application. We were only allowed to speak to call centre staff who were unable to provide any information on our application except to say that our passport application was in the examination stage.

The lack of any information about progress of an application after submission is unacceptable and caused us a great deal of stress and anguish.

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:

This would be very helpful to all intended parents who have to use an international surrogate. Any reduction of time spent living abroad for emotional medical and financial reasons would make an enormous difference to an already very stressful and emotional process.

The vast majority of Intended parents who have had to turn to international surrogacy to have their children will have already gone through very distressing fertility journey's many of which will have involved significant loss (miscarriages, still births, failed IVF cycles) and incurred huge financial costs.

A protracted stay abroad with a new baby, away from family, UK health care with complete uncertainty as to how long that stay will be, is not in the best interests of this vulnerable group of parents or a new born baby.

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Yes

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will

need to be completed after the birth of the child.Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

The information on the government website is completely out of date and unhelpful. We called the HMPO and Home Office on a number of occasions to request updated guidance and we were continually referred back to the out of date guidance.

Clearly HMPO and the Home Office know what documentation they require for citizenship and passport application so why is it not kept up to date ?.

Why has the government failed to provide comprehensive and clear advice on such an important subject ? The lack of clear information and guidance can potentially have devastating consequences for an already very vulnerable group of people.

As Intended parents we really felt that the lack of clear and up to date advice is used to try and deter intended parents from entering into internal surrogacy arrangements.

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:

107 Consultation Question 99:

Yes

Please provide your views below:

Very much agree with this proposal.

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

2019

international

If international, in which country did the arrangement take place?:

Republic of Georgia

Yes

(a) opposite-sex couple;

118 Consultation Question 110:

international

Yes

No

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:

It is very difficult to be not recognised as your child legal parents. It is extremely worrying to think that if our child for example required a serious medical treatment that we would legally not be able to provide permission for this.

Having to go to court to apply to become our child's legal parents is an extremely daunting and costly process. That adds another level of stress to what has already been a very difficult journey to have a baby.

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

1) This discriminates against people who are unable to provide a genetic link due to fertility and other health issues. It denies them the chance to become parents.

Please provide your views below:

This should be removed for people who can medically prove that they cannot provide a genetic link

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

international

Please provide your views below:

Approximately £50,000.

Please provide your views below:

Sale of a property.

Please provide your views below:

£25,000

Please provide your views below:

Sale of a property.

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response
- This is a response on behalf of an organisation
- Other

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Surrogate
- Intended parent
- Person born of a surrogacy arrangement
- Family member of a surrogate
- Family member of an intended parent
- Legal practitioner
- Medical practitioner or counsellor
- Social worker
- Academic
- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration.

Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,

- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in

surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or

parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

- 1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

- 1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

- 1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-16 17:14:21

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?

Legal practitioner

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

No

Please provide your views below:

Please provide your views below:

Yes I consider it essential that those judges dealing with international surrogacy cases have a genuine interest in the subject and a sufficient level of knowledge and experience. It is a highly technical area which falls outside the issues which most cases concerning children raise. Litigants are often self representing, and it is not easy for judges to know what they don't know.

9 Consultation Question 2:

Please provide your views below:

I do not consider surrogacy cases appropriate matters to be heard by lay justices. It is a highly technical area, largely based in law rather than determination of fact. This is likely to be particularly the case if the new pathway is adopted since cases which still require a post birth order are likely to be ones which carry some level of technical or legal difficulty. The combination of domestic cases falling outside the pathway - i.e. the proposed safeguards not having been complied with, and the potential for those persons being self representing increases the issues for a judge. In my view only ticketed judges should be able to hear surrogacy cases.

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:

I was recently instructed an international case which went in error to the DFJ at a particular court with no experience of surrogacy cases and no knowledge that international surrogacy cases should be dealt with at High Court level. The PO reporter had to flag this with the court and seek a transfer. In the meantime a number of erroneous directions had been made which needed to be rescinded. I had to be instructed to unravel the problems caused. The delay had particular implications for the child who had severe health needs, neither Intended Parent had PR.

Both cases I have dealt with where the surrogacy arrangements fell apart and resulted in contested proceedings concerned families who had not used a surrogacy agency. In one of them, the intended parents had been unaware that the surrogate had learning difficulties, this only became apparent part way through proceedings. This sort of issue would probably not have been picked up before lay justices.

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:

Another period

Please provide your views below:

There would appear to be no reason why records cannot be kept indefinitely in the same way that records of birth certificates and marriage certificates are kept indefinitely, particularly if that information can be stored electronically. A record may be needed after the end of the length of the resultant child's life.

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:

- i) If it is intended to encourage domestic arrangements and discourage international arrangements - this may be a feature which achieves the opposite.
- ii) anonymity is not the same as screening - e.g. in Ukraine there is extensive screening of donated gametes, and at the same time anonymity. It need not, therefore increase the risks to health.
- iii) this is an issue about which the surrogate and IPs are capable of taking informed autonomous decisions, as to which gametes they use, and it does not warrant losing all of the other benefits of the pathway to exclude this.

18 Consultation Question 11:

Other

Please provide your views below:

I agree that the surrogate should have the right to object in writing. I think the period and the mechanism need to be clearly defined, and that this needs to tie in with the registration process, so that the surrogate would have to give notice to the registrar in the area where the child is living to prevent the IPs from being able to register without the Registrar being aware of the surrogate's objection.

19 Consultation Question 12:

Yes

Please provide your views below:

20 Consultation Question 13:

Other

Please provide your views below:

I question whether this is an adequate safeguard to protect an incapacitous surrogate. What would the legal remedy be if the surrogate was later discovered to have been incapacitous. What if the IPs did not know that was the case? I think it would be preferable for the surrogate to have some involvement in the birth registration process if possible - this should not present an issue if she is consenting.

21 Consultation Question 14:

Yes

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:

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 consider that in those circumstances the Intended Parents should be the legal parents from birth.

26 Consultation Question 19:

Yes

Please provide your views below:

Please provide your views below:

I consider that the surrogacy agreement should contain details of the persons whom the intended parents would propose should be permitted to apply for guardianship in the event of their deaths, and that those named persons should be permitted to apply in that event.

27 Consultation Question 20:

No

Please provide your views below:

I think the better way to deal with this would be to have regard to any surrogacy agreement. If the agreement refers to one IP only, that person should be able to make the application alone, but if it anticipated 2 IPs notice should have to be given to the 2nd IP if there is a single applicant. Only to proceed as above if there is no surrogacy agreement.

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

I think the 3 parent model is confusing in a surrogacy situation. However, unless there is clarity about parenthood at birth, there exists the potential for a child to have no legal parent at birth until the time of court determination / the time for objection has lapsed. There could be a legal presumption that the IPs are the parents from birth in pathway cases which can be displaced by an objection being raised. If an objection is raised, the surrogate would be legal parent unless and until a PO is granted.

29 Consultation Question 22:

Please provide your views below:

I am conscious of the significant difficulties which have ensued in relation to legal parenthood of donor conceived children where clinics have been solely responsible for the consent process. Some of these issues remain, and are exacerbated by resource and other administrative issues. I think that where there is not a surrogacy agency otherwise involved, there should be some oversight nonetheless by a surrogacy agency and / or the surrogate and Intended parents should be expected to take legal advice in order to ensure that a situation does not arise where only clinics and surrogates / IPs are involved in the process.

30 Consultation Question 23:

Please provide your views below:

I would agree that the child's genetic relationships, including to siblings are important factors to consider, including potentially the religious, racial or cultural heritage of those relationships.

31 Consultation Question 24:

Please provide your views below:

I consider that the ACA checklist is not ideally suited given that it was not developed for circumstances of family creation. More relevant factors would include;

- (i) the ability of the applicants to meet the child's needs throughout his/her childhood
- (ii) consequences for the child of not making a PO,
- (iii) the child's genetic heritage
- (iv) the child's health
- (v) the circumstances leading to the child's birth, including any public policy considerations

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, if there is a surrogacy agreement evidencing their status as IPs.

33 Consultation Question 26:

Other

Please provide your views below:

Yes, but I consider there is the potential for some ambiguity about these criteria, and the potential for this state of apparent intent to subsist for some time before any application actually being made, or lack of clarity if there is a lack of awareness about the need for a PO. It would provide greater security for the IPs to have parental responsibility from birth if the child is living with them and if there is a surrogacy agreement in place which envisages them caring for the child from birth.

34 Consultation Question 27:

Other

Please provide your views below:

Yes, but I consider that the IP should have parental responsibility in any situation where they are caring for the child, or wish to do so, and where the surrogacy agreement provided that they would assume care of the child on birth, to deal with situations where the child remains in the care of the surrogate and is the subject of the dispute. The court could retain power to extinguish the IPs PR.

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:

If there is a dispute about where the child is going to be living, or whether a parental order should be made, in some circumstances it is important to prevent the exercise of PR by one or more parties in a manner which may have long term implications - birth registration, baptism or other religious ceremony, naming, circumcision etc. If there is to be a sharing of PR pending resolution of child arrangements or legal parenthood I think that none of the prospective parents should be able to take certain steps without the agreement of both surrogate and IPs.

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:

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?

Other

Please provide your views below:

I don't have a strong view. However, I note that non-NHS fertility clinics are not required to be non-profit making. If the agency is to be paid in any event, whether someone at the agency receives a salary or makes a profit may well be a distinction without a difference.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Yes

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

I think persons providing matching and facilitation services should be required to be registered in some way, even if not required to be a 'regulated organisation' in the same way as surrogacy organisations providing the full pathway package. There could be a set of criteria that any registered matching service should be required to comply with.

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:

If there was provision requiring all matching services to be registered, even if not regulated, then my view would be that the provision of matching facilities by unregistered and unregulated individuals or organisations should be capable of being fined and / or subject to criminal sanction depending on the nature and extent of the breach.

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?

No

Please provide your views below:

I think that the full birth certificate should make it clear to the person whose birth it records that the registrar holds additional information about the circumstances of their birth which they are entitled to be provided with on enquiry being made by that person or a specified group of persons. I do not think it is necessary for any person who is able to access or has sight of the full birth certificate to know that the person concerned was born following surrogacy, this is private information which the person whose birth is recorded on the birth certificate should have the right to decide whether to share it.

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) I think that following surrogacy it should be possible for a child to have a birth certificate which reflects their intended parentage (per the pathway proposed)
- (ii) I think in any case of donor conception the birth certificate should make clear that there is additional information held by the registrar that the person whose birth is registered is entitled to obtain, so that the fact of donor conception cannot be hidden indefinitely
- (iii) I think that parents should have the option to register themselves as 'parent' rather than mother or father

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Yes

Please provide your views below:

But I also consider that intended parents ought to be able to utilise gametes from anonymous donors abroad in surrogacy arrangements and that this ought not to be prohibitive.

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:

No, I don't think this is necessary unless there is a risk that they are genetically related.

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:

No

Please provide your views below:

A family may be working in the UK for a time limited period without becoming HR here, or may have more than one country base. This might be some years after the birth. I think it is important to be able to recognise the child's legal relationship in a country where that child may be living for part of the time, or a time limited period. I think there should be a nexus test of sufficient connection with the UK rather than an habitual residence test.

Please provide your views below:

See above, I think the test should be one of sufficient connection rather than habitually resident. This could be qualified by giving examples such as being resident for part of the year, or for the 6 months prior to the application, or maintaining a residence here.

65 Consultation Question 57:

Please provide your views below:

I agree it should be removed, save for preventing persons who are within prohibited degrees from applying.

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:

I think there should be a medical reason for double donation, but not necessarily medical necessity - for example both intended parents might be carriers of a genetic condition which would make it unwise for them to conceive with their own gametes.

Please provide views below:

Yes

No

Please provide views below:

Whilst it may be appropriate for there to be additional scrutiny where there is double donation in International cases, I don't think there should be a blanket prohibition, which might lead to children being legal orphans who could otherwise benefit from the security of a parental order. The court should be able to exercise a discretion.

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:

I consider this should be an area where a court could exercise discretion.

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:

I agree with this but don't consider it should be the only circumstances in which a single applicant without a genetic link should be able to apply.

70 Consultation Question 62:

Please provide your views below:

No, it is not currently required under HFEA, and not evidence of it being a real issue in the UK. There may be complex reasons why surrogacy has been chosen which are not social or elective and not exploitative but which don't readily fit into a test of medical necessity.

Please provide your views below:

I think the difficulty of defining this is one of the problems with introducing such a provision. Would, for example, a phobia regarding childbirth be considered a medical necessity? I think any definition would need to encompass genuine physical or psychological reason as well as physical inability.

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

(1) The intended parents may have sound reasons for using gametes from a country which permits anonymous donation - for example ensuring consistency with their own ethnic or racial origin, or ensuring genetic consistency with existing children of the family. They may not, therefore, be in a position to enter that information on the register. It is not a requirement currently. A provision of this nature would be likely to increase the number of children in respect of whom the legal certainty and protections of a parental order could not be made.

(2) I agree this should remain a requirement.

Yes

Please provide your views below:

72 Consultation Question 64:

Other

Please provide your views below:

I think there should be an age limit which relates to the youngest IP's age at the date of the child's birth where there are 2 IPs. The child may be a number of years old at the time of the application - a 50 year old intended parent in respect of a 10 year old child is no different to someone giving birth naturally at 40.

Please provide your views below:

I agree there should be a maximum for the pathway, which relates to the youngest or sole IPs age at the time of the child's birth. I would suggest 55.

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:

Yes, but testing of the partner of the surrogate should be limited to screening which might affect the health of the surrogate or the baby.

Please provide your views below:

I think that if families entering into independent traditional surrogacy arrangements wish to bring themselves within the pathway, they should be required to meet the expectations of that pathway themselves, otherwise more families will be encouraged to avoid the use of surrogacy agencies and the regulatory factors which are intended to make surrogacy safer. This is not insurmountable. It may be that clinics can offer the types of testing which they would offer to those using their services for conception as well as those entering into surrogacy independently.

75 Consultation Question 67:

Yes

Please provide your views below:

Yes, but

- a) In respect of the spouse / partner of a surrogate it should be limited to those with whom the surrogate is currently in a relationship (i.e. not a spouse the surrogate is separated from), and
- b) generally in my experience implications counselling is not carried out to a high standard by clinics. it would be preferable for this to be carried out by surrogacy agencies whose primary focus is surrogacy, rather than nurses whose primary focus is fertility

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Yes

Please provide your views below:

77 Consultation Question 69:

Yes

Please provide your views below:

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

No

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Yes

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on an allowance;

Please provide your views below:

Given the extraordinary service being performed by the surrogate in carrying a child, it is demeaning to her to require her to account for each penny. It may also deter her from incurring costs which are legitimate and reasonable - such as taking a recuperative holiday or time off work if she has to account for it in detail.

81 Consultation Question 73:

Please provide your views below:

Yes, but not exclusively. The very difficulty in determining what is essential is one of the reasons for which it should not be limited to this.

82 Consultation Question 74:

Please provide your views below:

Yes. The difficulty in distinguishing between essential and additional is one of the reasons for which the law should not attempt to do so.

83 Consultation Question 75:

Please provide your views below:

Yes. This is likely to vary considerably from surrogacy to surrogacy, but broadly speaking it should be capable of including any expense which the surrogate would not have incurred but for the surrogacy.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

Yes

85 Consultation Question 77:

Please provide your views below:

Yes

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:

These categories are similar to general damages in a personal injury claim. It should not be possible to escape liability for damage to the health of a surrogate arising from the surrogate pregnancy

In reality, a significant proportion of the sums already paid to surrogates represents payment for the pain and inconvenience arising from pregnancy. A surrogate is performing an important service for the intended parents which will impact upon her energy, may make her feel unwell, may impact on her time with her own children, and whether or not a child arrives at the end of it she should be compensated for that service.

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:

I think a cap is likely to increase the chance of more surrogacies being domestic rather than international

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

Yes

89 Consultation Question 81:

Please provide your views below:

Yes gifts should be permitted. Gifts are usually just that - something to say thank you, and no part of the surrogacy agreement. Surrogates usually have no expectation of gifts, and do not request them. Provided these are distinguished from non monetary forms of compensation (e.g. a surrogacy agreement which envisages the IPs buying a car for the surrogate), I do not think there needs to be a limit on a genuine gift - such as a holiday for the surrogate and her family - which may be costly but not exploitative.

90 Consultation Question 82:

Not Answered

Please provide your views below:

I think it is difficult to distinguish between this and the pain and inconvenience associated with pregnancy in general. Paying for either of those things constitutes paying for a gestational service. To that extent I think it should be permitted, but I don't think there should be an additional 'service payment' over and above a compensation payment for the pain and suffering of being pregnant - being pregnant with all that goes with it is the service that is being performed.

a fixed fee set by the regulator.

Please provide your views below:

As with other payments, if payment for a service in whatever form is introduced I think fixed fees are more likely to encourage domestic surrogacy essential costs relating to the pregnancy; additional costs relating to the pregnancy; lost earnings; gifts.

Please provide any views below:

I think a surrogate should be able to be paid for the service she is providing, which includes incurring the pain and inconvenience of pregnancy. I don't see an argument for paying for the service as well as the pain and inconvenience.

91 Consultation Question 83:

Please provide views below:

My view is that the surrogate should be paid a monthly allowance which achieves a total over the period of the pregnancy. If she is pregnant for a lesser period this would axiomatically be less. She may also receive an additional payment which compensates for the trauma of miscarriage or termination.

Not Answered

Please provide your views below:

See above, I think the payment should be monthly which addresses this.

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:

Cases which exceed a cap should not fall within the pathway so as to incentivise remaining within the cap.

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:

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:

My understanding is that being a foreign IP would not prevent an IP from engaging with a surrogacy agency and complying with all of the safeguards, even if this didn't result in parentage being conferred because of the lack of domicile / HR. If the safeguards were complied with, but the IPs lived abroad, say in a country which does not permit surrogacy, it is difficult to see what the risk of harm would be of an IP coming to the UK solely for the purposes of engaging in a highly regulated surrogacy arrangement. I don't see why it would be necessary to restrict removal from the jurisdiction in those circumstances.

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

n/a

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential.

As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

- 1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

- 1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

- 1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-17 17:11:23

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:

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:

Other

Please provide your views below:

People living in the UK should not be able to go abroad and basically buy a baby from poor women in countries that have worse protection in the uk. We should prohibit any such arrangements

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:

People should be no more able to rent women's wombs than they should be able to rent their vaginas, mouths, anuses or hands.

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:

Surrogacy should be banned. We do not have a "right" to a child that is genetically ours and poor women should not be put at risk through wealthy people making them pregnant

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

The mother has carried the baby. It is her child. The adoptive parents can become legal guardians afterwards if the mother consents

15 Consultation Question 8:

Other

Please provide your views below:

I would ban surrogacy but if it does happen then of course records should be kept

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:

If they're using donated doers why not just do AID?

18 Consultation Question 11:

Yes

Please provide your views below:

19 Consultation Question 12:

Other

Please provide your views below:

Inevitably the surrogate parents will be wealthier than the mother and so more likely to win in court

20 Consultation Question 13:

No

Please provide your views below:

Unless the surrogates are psychiatrists then how can they make that judgement?

21 Consultation Question 14:

No

Please provide your views below:

It would be in the agencies' interests to ensure that everyone "passed" so that they get paid. Any assessment should be undertaken by social services

22 Consultation Question 15:

Yes

Please provide your views below:

Not Answered

Please share your views below:

Under what circumstances us there likely to be a child born outside of these regulations?

23 Consultation Question 16:

Other

Please provide your views below:

It should be settled between the parties. The mother should not have to pay

Other

Please provide your views below:

Why do you keep talking about "outside of the path pathway"? There should be NO children born outside of the pathway

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:

Other

Please provide your views below:

And then what? What happens to the baby?

Please provide your views below:

2

27 Consultation Question 20:

No

Please provide your views below:

Longer time period needed for such a decision

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:

It shouldn't have happened in the first place. You can't just leave a child with unknown people who haven't been vetted

34 Consultation Question 27:

No

Please provide your views below:

Foster or leave with the mother

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

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?

No

Please provide your views below:

Surrogacy should be banned

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:

Any uk resident should be bound by the law no matter the circumstances or the country in which the surrogacy has happened

Please provide your views below:

40 Consultation Question 33:

No

Please provide your views below:

Just another way to profit from poor women

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:

No

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?

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?

No

Please provide your views below:

It's not s product

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:

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:

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 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

Surrogacy is s form of prostitution

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:

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 is like asking if rich people can buy a kidney.

Not Answered

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Not Answered

Please provide your views below:

International surrogacy should be banned. Women in developing countries are being paid to rent out their wombs to wealthy UK nationals. Unless we can guarantee freely given consent (which is unlikely where money changes hands) then it should not be condoned by the UK government

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:

This should be changed to primary care giver and secondary care giver in order to better encompass today's many families

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:

If it is to proceed then it should be no different from adoption

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

They haven't actually physically given birth so I can't imagine what considerations there would be. They're not going to be expressing milk are they?

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

It should be banned

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 should be banned.

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:



CATHOLIC BISHOPS' CONFERENCE OF ENGLAND AND WALES
39 Eccleston Square, London SW1V 1BX
www.catholicchurch.org.uk

FAO Surrogacy Team
Law Commission
1st Floor, 52 Queen Anne's Gate
London
SW1H 9AG

Sent via email to surrogacy@lawcommission.gov.uk

7 October 2019

Dear Sir/Madam

Response: Building Families Through Surrogacy: A New Law

The Catholic Bishops' Conference of England and Wales is opposed to surrogacy in principle as it breaks the fundamental bonds between love, sexual intimacy, pregnancy and parenthood. In this way it is an objectification of pregnancy and of the pregnant woman, who becomes the object of a technocratic process. The Law Commission's proposals for changing the law on surrogacy undermine further both pregnancy and parenthood by introducing unreasonable expectations on the surrogate which do not respect her dignity and rights as a mother.

This response will explain some principles which relate to the Law Commission's proposed changes.

Legal parenthood

Pregnancy creates the bond between the mother and her child so that she is already a mother. The law should reflect this default position regarding legal parenthood. The expectation of the mother's 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. Pregnancy is the first step in one's parental vocation, and as such should be seen by those entering into it as a fully committed parental relationship, not as 'just another job'.

Legal protections and the rights of the mother

We believe that the new pathway offers insufficient protections to surrogates.

There is a fundamental imbalance in surrogacy arrangements which shows a lack of respect for the bonds created by bearing a child. The proposed changes to the law only serve to emphasise this inequity. They reduce the gift of pregnancy to a contract.

The vital relationship between the mother and her child demands greater 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.

Elective surrogacy



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In no case do we believe that the fragmentation of motherhood and co-opting of the body of another woman to gestate the child is a humane or respectful solution to the psychological difficulties which some women experience before or during pregnancy. Allowing elective surrogacy increases the risk that such arrangements could become widespread in the future, reinforcing social inequality, and promoting a general view by which pregnancy is seen as merely a job to delegate, not a profound and maternity-creating bond. This is a deeply utilitarian view rather than one which is relational and nurturing of fundamental human relationships. The current ban on advertising surrogacy services should be continued to further this dignity.

Respect for the dignity of all life

Payment of costs prior to pregnancy amounts to payment to become a biological mother or, at least, a subsidy to become a biological mother on behalf of other people. The respect for the dignity of the mother is undermined when pregnancy is likened to a contract for services provided.

Furthermore, the child in the womb is to be protected and nurtured as a human person in its own right. The payment of expenses for a termination of pregnancy, such as where the baby has a medical condition, does not respect such dignity. To treat abortion as reimbursable, for example, 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. This denies respect for the dignity of both the unborn child and the mother, and this simply cannot be accepted in our society.

Conclusion

We believe that the Law Commission's proposals to change the law on surrogacy cross the line of what is a reasonable expectation from individuals, in this case surrogate mothers, in a free society.

The responsibilities which parenthood demands, as well as the many joys it brings throughout the life of the parent, should not be taken lightly or for granted. Whilst opposed to surrogacy in principle, surrogacy is part of our society and needs to be understood as a complex and life-changing arrangement for all involved parties. From a relational perspective, it demands a rigorous and fair legal structure to ensure that exploitation does not occur and basic human rights are respected.

The Catholic Bishops' Conference of England and Wales support the response from the Anscombe Bioethics Centre in Oxford.

Yours sincerely

A handwritten signature in black ink, reading "Bishop Sherrington".

Bishop John Sherrington
Lead Bishop for Life Issues

1 What is your name?

☐ ☐

NA

If other, please provide details:

5 What is your email address?

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██████████

I would like my personal information (name, contact details) to remain strictly confidential.

8 Consultation Question 1:

Please provide your views below:

9 Consultation Question 2:

As this is an extremely important matter, it should be considered by the highest level of the legal system possible.

Please provide your views below:

11 Consultation Question 4:

Other

Please provide your views below:

Any parental order needs to be very carefully considered and should not be rushed as it is such an important matter.

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:

It is very damaging for a child, especially a new born baby, to be taken away from its birth mother. It is not something that should be encouraged or made legally easy to do. The rights of the birth mother should be retained, not taken away. A birth mother may change her mind about parental rights for many reasons. She may have been manipulated or pressurised into making the surrogacy arrangement, or been debarred for money and so entered into an agreement through debarment, or may not have had full understanding of the implications and consequences. Information may come about that the intended parents might be unfit to be parents.

Commercial surrogacy can be extremely damaging, especially for the child and the mother. A mother's body should not be available as a womb for rent. Vulnerable or poor women, or women with learning difficulties, may be exploited by this industry. A child is not a commodity that can be bought and sold.

15 Consultation Question 8:

Other

Please provide your views below:

I don't agree with commercial surrogacy organisations. Commercial surrogacy can be extremely damaging, especially for the child and the mother. A mother's body should not be available as a womb for rent. Vulnerable women e.g. women in poverty, women with learning difficulties, may be manipulated and exploited by this industry. A child is not a commodity that can be bought and sold.

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:

One week after giving birth to a child is an extremely short period of time. Even if there are no unexpected medical complications or trauma arising after the birth, this is a life-changing physical and emotional process that may take a very long time to recover from. The birth mother may be recovering from surgery or other medical problems. The birth mother may experience post-natal depression. The birth mother may be physically and/or emotionally unable to make this objection one week within giving birth. If the birth mother is vulnerable and/or has been exploited, she may not have the capacity or ability to make this objection. The rights of the child and birth mother should be retained.

19 Consultation Question 12:

No

Please provide your views below:

If the birth mother objects to the intended parents becoming the legal parents, then that decision should be final. The intended parents should not be allowed to apply to take a child away from it's birth mother without her consent. The only circumstances under which the birth mother should lose parental rights should be reasons that would apply in any other situation e.g. addicted to heroin and unable to care for children.

20 Consultation Question 13:

Other

Please provide your views below:

21 Consultation Question 14:

No

Please provide your views below:

I don't agree with commercial surrogacy organisations. Commercial surrogacy can be extremely damaging, especially for the child and the mother. A child is not a commodity that can be bought and sold. A commercial surrogacy industry will not prioritise children's welfare. The welfare of children should be paramount.

22 Consultation Question 15:

Other

Please provide your views below:

I don't agree with the new pathway. The rights of the birth mother should be retained.

Other

Please share your views below:

I don't agree with the new pathway. The rights of the birth mother should be retained.

23 Consultation Question 16:

Other

Please provide your views below:

I don't agree with the new pathway.

Other

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:

I don't agree with the new pathway.

26 Consultation Question 19:

Other

Please provide your views below:

I don't agree with the new pathway.

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

The rights of the birth mother should be retained and not "extinguished".

29 Consultation Question 22:

Please provide your views below:

I don't agree with the new pathway. Any determination of legal parenthood should be overseen at the highest legal level as it is such a serious matter.

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:

The period of right to object needs to be long enough to ensure there is a reasonable opportunity for the birth mother 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?

No

Please provide your views below:

I don't agree with the new pathway. It removes rights of the birth mother.

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 don't agree with the new pathway. It removes rights of the birth mother.

Please provide your views below:

40 Consultation Question 33:

No

Please provide your views below:

This should not be made into a commercial industry. Children are not commodities. New born babies should not be removed from their birth mother, unless there are highly exceptional circumstances and it is a last resort. Women's bodies should not be available to rent. Vulnerable women should not be exploited in this way.

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?

No

Please provide your views below:

Surrogacy should not become a commercial and/or regulated industry. Vulnerable women should not be exploited in this way. Children should not be treated as commodities.

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:

This should not be a commercial industry.

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 an industry with advertising. That concept is abhorrent.

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 child should always have access to correct and complete information about their birth.

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 child should always have access to correct and complete information about their birth. The birth mother should be recorded on the birth certificate, otherwise that is not a correct record.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

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:

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:

Other

Please provide your views below:

18 is too young to make these types of decisions. Intended parents should not be allowed to exploit a potentially vulnerable teenager.

Other

Please provide your views below:

18 is too young to make these types of decisions. Intended parents should not be allowed to exploit a potentially vulnerable teenager.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Other

Please provide your views below:

I dont agree with the new pathway. it removes rights from the child and the birth mother.

Please provide your views below:

75 Consultation Question 67:

Other

Please provide your views below:

I dont agree with the new pathway. it removes rights from the child and the birth mother.

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 dont agree with the new pathway. it removes rights from the child and the birth mother.

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:

I dont agree with the new pathway. it removes rights from the child and the birth mother.

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:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

81 Consultation Question 73:

Please provide your views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

82 Consultation Question 74:

Please provide your views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

83 Consultation Question 75:

Please provide your views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

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:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

85 Consultation Question 77:

Please provide your views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

86 Consultation Question 78:

Please provide your views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

87 Consultation Question 79:

Please provide your views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

Please provide your views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

Not Answered

Please provide your views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

89 Consultation Question 81:

Please provide your views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

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:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

Not Answered

Please provide your views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

Please provide any views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

91 Consultation Question 83:

Please provide views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

Not Answered

Please provide your views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

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:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

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:

Commerical surrogacy should be banned. Children should not be treated as commodities that can be bought and sold. Potentially vulnerable women should not be exploited or manipulated into entering these arrangements.

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:

Conditions should not be imposed by someone on another persons lifestyle. That is controlling.

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:

Vulnerable women in other countries, who may be living in extreme poverty, should not be exploited.

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:

Vulnerable women in other countries, who may be living in extreme poverty, should not be exploited. The children may become emotionally distressed when they learn about the circumstances of their birth and removal to another country.

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:

Vulnerable women in other countries, who may be living in extreme poverty, should not be exploited. The children may become emotionally distressed when they learn about the circumstances of their birth and removal to another country.

107 Consultation Question 99:

Not Answered

Please provide your views below:

Vulnerable women in other countries, who may be living in extreme poverty, should not be exploited. The children may become emotionally distressed when they learn about the circumstances of their birth and removal to another country.

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

People from other countries should not be able to remove a child from the UK under these arrangements.

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

Surrogacy should not be made into an industry. It can be extremely exploitative, and damaging for the welfare of 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:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

The new proposals regarding surrogacy are extremely concerning. It appears that surrogacy may become a commercialised process. Vulnerable women may be exploited, and may lose their parental rights to children they have carried and given birth to. Women may enter into the process because they are desperate for living expenses, or they may be manipulated and not fully understand the long term consequences of the process. They could lose their parental rights at a time when they are extremely vulnerable straight after giving birth. New born babies may lose any opportunity for contact with their birth mothers. When these children grow up, they may be very distressed to find out about the circumstances of their birth.

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response
- This is a response on behalf of an organisation
- Other

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- 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 of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate;
or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

(1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and

(2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during

pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the ‘intended parents’ are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman’s health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn’t in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of ‘attractiveness’ for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people’s thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself. There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and
- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-YJAB-B

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-23 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:

No

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

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:

I would not like to have my name mentioned as the situation around my experience involved litigation in The UK and in the UAE, both of which I lost legality over the intended child, and therefore I would like to avoid any further responses from the other intended parent as the whole process has been emotionally and financially exhausting. I would however like to give my opinion on the changes to the law needed based on my personal experience.

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

The high court is the supreme court and not subject to further review. This provides peace of mind to all parties and in particular the child.

Please provide your views below:

The UK legal system is still respected in many jurisdictions and a supreme judgment ends all debate.

9 Consultation Question 2:

Please provide your views below:

If both intended parents are biologically linked then these cases should be referred to other levels of judiciary.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

None.

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?

Other

Please provide your views below:

Unsure.

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 the surrogate entered into a legal arrangement, that should be honoured at the time of the birth, however it is every person's right to change their mind and therefore the surrogate should be allowed to object if she is unable to part with the child she carried for 9 months.

15 Consultation Question 8:

Yes

Please provide your views below:

Yes, clinics should be responsible for the safeguarding of any agreement.

Another period

Please provide your views below:

25 years until the child is an adult.

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

The child may want to know the biological line inherited and there should be a record of that.

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:

Either way if the law dictates that an anonymous egg should be prohibited then the same should apply to sperm.

18 Consultation Question 11:

No

Please provide your views below:

Yes the surrogate should have a right to object, 6 weeks is preferable as emotions are likely to be high after the birth and there should be a cooling off period. It gives time to think things through.

19 Consultation Question 12:

Yes

Please provide your views below:

The judge should decide what the right environment should be for the child for its well being.

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

Yes

Please provide your views below:

The clinic needs to take responsibility at the offset.

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:

Yes they should take responsibility for the child.

26 Consultation Question 19:

No

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:

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:

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;; providing data to the regulator and to such other person as required by law.

Please provide your views below:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

No

Please provide your views below:

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?

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?

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?

No

Please provide your views below:

Might be embarrassing for the child in later years.

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:

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:

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:

Yes

Please provide your views below:

Please provide your views below:

Yes

Please provide your views below:

72 Consultation Question 64:

No

Please provide your views below:

Should be an age limit of 54. Cannot defy nature and energy levels. Should be child centred,

Please provide your views below:

No

Please provide your views below:

25 minimum as it's a emotionally complicated mature process.

73 Consultation Question 65:

No

Please provide your views below:

As above.

No

Please provide your views below:

As above.

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:

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, 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:

any sum agreed between the parties to the surrogacy; or

Please provide your views below:

additional costs relating to the pregnancy; 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:

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?

No

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?

No

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 provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

international

If international, in which country did the arrangement take place?:

No

(a) opposite-sex couple;

118 Consultation Question 110:

international

No

Yes

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)

[Enter your name here.]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response
- This is a response on behalf of an organisation
- Other

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Surrogate
- Intended parent
- Person born of a surrogacy arrangement
- Family member of a surrogate
- Family member of an intended parent
- Legal practitioner
- Medical practitioner or counsellor
- Social worker
- Academic
- Other individual

5. What is your email address?

Email address:

[Enter your email address here.]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[Enter your phone number here.]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration.

Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,

- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in

surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or

parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

- 1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

- 1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

- 1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-YJ7G-6

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-25 15:31:39

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

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:

Other

Please provide your views below:

There should be no international surrogacy arrangements.

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 be the legal parents only after the birth of the child. Giving birth is a extremely dangerous and traumatic time for mother and child. The mother may change how she feels about giving up her child and should have some time - no matter how short to be recognised as the mother.

15 Consultation Question 8:

Other

Please provide your views below:

I

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:

Yes

Please provide your views below:

19 Consultation Question 12:

Other

Please provide your views below:

The legal mother (surrogate) should be legal mother

20 Consultation Question 13:

No

Please provide your views below:

The intended parents should not be the ones to make a declaration on whether the woman who is going to bear their child lacks capacity. This should be done by a disinterested party.

21 Consultation Question 14:

Other

Please provide your views below:

There should be strict requirement to check the welfare assessment of the child after their birth

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:

The mother who gave birth should be recognised as the legal parent if the child is born stillborn. She went through a life changing experience and this must be recognised.

Intended parents cannot have the same grief.

A mother who has given birth to a disabled child will love and care for that child whereas people who use women as surrogates have been known to abandon their imperfect children. Recent case in Thailand and Ukraine.

No

Please provide your views below:

The mother should be the legal mother

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:

26 Consultation Question 19:

No

Please provide your views below:

The mother should be recognised as the legal mother

Please provide your views below:

Option 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:

judicial

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Not Answered

Please provide your views below:

34 Consultation Question 27:

No

Please provide your views below:

Should acquire parental responsibility some time after the birth

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Yes

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

No

Please provide your views below:

Yes

Please provide your views below:

41 Consultation Question 34:

Please provide your views below:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Not Answered

Please provide your views below:

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

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:

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?

Not Answered

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Not Answered

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

Keep prohibition against charging for negotiating, facilitating and advising on surrogacy agreements

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

There should be no advertising of surrogacy.

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:

Record Sex

If gender is to be recorded add this to the birth certificate to be recorded in addition to sex. The official document will then be truthful and reflect historical accuracy.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Not Answered

Please provide your views below:

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

60 Consultation Question 52:

Please provide your views below:

Please provide your views below:

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 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:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Yes

Please provide your views below:

Please provide your views below:

65 Consultation Question 57:

Please provide your views below:

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Not Answered

Please provide views below:

67 Consultation Question 59:

Not Answered

Please provide views below:

Please provide views below:

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:

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:

Difficulty is cost of independent legal advice, women who tend to carry babies for other people tend to come from impoverished backgrounds

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:

Requiring that a woman has previously given birth as an eligibility requirement of the new pathway would affect the rights of her existing children. Women can suffer throughout pregnancy and die during labour leaving her own family without a mother. This would breach the human rights of the children to a family life. This will breach rights of the Child.

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:

This is disgusting - are you proposing that poor women should be available to have multiple births and ruin their health and bodies to provide children for people rich enough to buy them!
There should absolutely be a maximum number of pregnancies a woman should undertake for intended parents.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

There should never be payments - this would be exploitation of poor women

81 Consultation Question 73:

Please provide your views below:

There should be no payment

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:

No amount of money can compensate for the loss of a mother or indeed any human life.

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:

You have neglected to ask if the intended parents should pay for the child should it be born and not be the perfect child expected. If the child is disabled for instance. The mother will have to bear the cost of bringing up a child.

Not Answered

Please provide your views below:

Money cannot make up for the trauma of these experiences

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?

No

Please provide your views below:

There should be no international surrogacy agreements

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 provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

The European Court of Human Rights Article 8 "Everyone has the right to respect for his private and family life, his home and correspondence" In *E.B v France* it was stated that "the provisions of Article 8 does not guarantee the right to found a family or the right to adopt... The right to respect for "family life" does not safeguard the mere desire to found a family". Article 17 explicitly prohibits the Convention's rights in such a way as would encroach on someone else's rights - the right to respect for a family life does not mean anyone else is obliged to provide you with children.

The UN Special Rapporteur report on the sale and sexual exploitation of children's 2018 report on surrogacy rejects the notion of the right to found a family is the right to a child. "A child is not a good or service that the State can guarantee or provide, but rather a rights-bearing human being. Hence providing a 'right to a child would be a fundamental denial of the equal human rights of the child"

Surrogacy breaches the human rights of women - it is poorer women who bear children for rich women. Women have fewer opportunities and economic resources and can be forced into prostitution and trafficked and often women find themselves trafficked in order to become surrogates. In the consultation you propose no maximum number of surrogate pregnancies a woman can undertake - animals will have more protection than women in this case as licenced breeders will lose their licence if they breed more than 6 litters from a bitch.

I note that India, not the most progressive country with regard to women's rights has banned commercial surrogacy. Thailand too has banned commercial surrogacy. I am against the UK making surrogacy easier.

The Law Commission is not a disinterested party - surrogacy is very profitable and lawyers will stand to increase their profits by the de-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:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name.

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation

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)

Social Worker – retired.

- 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

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration.

Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,

- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in

surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or

parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child’s country of birth.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other countries.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-YJ7E-4

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-28 00:02:52

About you

1 What is your name?

Name:

██████████

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

Surrogacy UK

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Surrogate

5 What is your email address?

Email address:

████████████████████

6 What is your telephone number?

Telephone number:

██████████

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Not Answered

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Not Answered

Please provide your views below:

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Not Answered

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

As a surrogate, I do not want parental responsibility for someone else's child. The IP's should be legally acknowledged as parents from the birth of their baby

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:

Yes

Please provide your views below:

IP's should be acknowledged as legal parents from birth, in all circumstances.

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:

IP's should be legally acknowledged as parents from birth.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

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?

Yes

Please provide your views below:

Surrogacy is about helping people to become parents, not something that should be profited from

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?

Yes

Please provide your views below:

Every child has the right to know how they came to be

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:

Children born through surrogacy should know the truth of how they came to be

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:

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:

Yes, IP's should be legally acknowledged as parents from birth. As a surrogate, I do not want parental responsibility for someone else's child, for any amount of time

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?

Yes

Please provide views below:

The baby should live with its intended parents to avoid any possible abuse of surrogacy arrangements.

67 Consultation Question 59:

Not Answered

Please provide views below:

Please provide views below:

Not Answered

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Not Answered

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

Please provide your views below:

71 Consultation Question 63:

Not Answered

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

72 Consultation Question 64:

Not Answered

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

73 Consultation Question 65:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Not Answered

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Not Answered

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Not Answered

Please provide your views below:

77 Consultation Question 69:

Not Answered

Please provide your views below:

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, but without the need for production of receipts; or

Please provide your views below:

As a surrogate who has undertaken a journey, it was not possible to obtain a receipt for every pregnancy expense incurred. I did keep a spreadsheet of all pregnancy expenditures, however, if expenses are agreed between surrogate and IP's before a surrogacy journey begins and everyone is happy, there should be no need to scrutinise expenses. As long as the final amount is within a reasonable limit, expenses are personal and individual to each surrogate.

81 Consultation Question 73:

Please provide your views below:

Yes, IP's should pay essential costs to surrogates.
Essential costs are including but not limited to

Child care for illness and appointments

Travel expenses to and from appointments and visiting IP's

Maternity clothes

Toiletries

Medication and supplements

Healthy food

Convenience food

Additional help around the home

Time off work

As a single IP with 3 children of my own, I would not have been able to go through a pregnancy for my friends without additional paid support for childcare when necessary and also additional help at home, when I was too ill to do things myself due to the pregnancy.

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

IP's should pay all costs incurred by the surrogate during pregnancy, plus any costs arising from pregnancy related issues post birth. A surrogate should not be out of pocket for carrying someone else's child.

Costs should include

child care, this was very important for me as a single mother to 3 children. For the first 12 weeks I suffered from extreme sickness and fatigue and spent a fortune on child care as I could not move out of bed due to being so ill. I shouldn't have to cover this cost myself, as I would have been able to care for my own children had it not been for the pregnancy sickness.

Maternity clothes and underwear.

Clothes post birth (I am 7 months post birth and still cannot fit back into my own pre pregnancy clothes)

Travel expenses relating to pregnancy

Costs covering extra food/healthy food/ convenience foods

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:

IP's should cover cost of lost earnings if they are due to the pregnancy

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

I think it should be allowed if mutually agreed by the surrogate and IPs

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 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:

Surrogates should have any pregnancy related expense covered by the IP's. The IP's should not pay the surrogate for their 'service' as I think this would be unethical.

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:

All parents should have the right to time off work pre birth, in order to prepare for becoming a parent.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

HFEA submission to 'Building families through surrogacy: a new law' consultation

1. Overview

- 1.1. This submission provides the response from the Human Fertilisation and Embryology Authority (HFEA) to the public consultation 'Building families through surrogacy: a new law'. We have confined our responses to consultation proposals that directly mention the HFEA, or proposals where our regulatory experience with licensing and inspecting fertility clinics prompts us to comment on specific aspects.
- 1.2. Our submission responds to [the long version](#) of the consultation. Paragraph references to the relevant long version text are given in the question boxes for ease of reference.
- 1.3. Overall, while we can see why the commissions have concluded that the current responsibilities of the HFEA make it suitable to take on the regulation of surrogacy arrangements, we would wish to highlight that many of the consultation's proposals would represent fundamental changes to our current legal remit, operation, infrastructure and expertise, which is structured and operates as reflects the entirely medical or scientific environment for licensing and regulation of fertility treatment and embryo research.
- 1.4. Given that the proposals would represent a fundamental shift to regulation of a quite different previously unregulated model of operation of surrogacy organisations working outside of the medical context, we regard the opportunities to directly transpose or extend existing regulatory models as being quite limited. We would particularly draw your attention therefore to consultation question 39, in relation to our proposed future regulatory role, and consultation question 47, in relation to the register of information held by us.

Our response is indicative only at this stage and we would provide a more detailed assessment of any future draft legislation and the consequential cost implications for this work.

2. Consultation question 7

Consultation question 7

19.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

Paragraph 8.13

- 2.1.** The proposal at 8.7 of the consultation, that the agreement must be supervised and counter-signed by either a regulated, licensed fertility clinic or a regulated surrogacy organisation, would need to be carefully considered in terms of the impact it may have on regulated clinics. The supervision and counter-signing of surrogacy agreements would place greater responsibility on regulated fertility clinics than at present and therefore may be better supervised and counter signed by a regulated surrogacy organisation than a clinic (presumably clinics are free to apply to be a regulated surrogacy organisation and we would question how that is managed in regulatory terms). However, we also recognise the fact that if this meant that parties to a gestational surrogacy would have to involve a regulated surrogacy organisation as well as the clinic, this could potentially place a greater burden (financial and otherwise) on those parties.
- 2.2.** This responsibility would include the responsibility to explain the function of the agreement to the parties, to potentially provide a template contract document, to check the contract was suitable and correct, to confirm parties had fulfilled eligibility and screening requirements, to facilitate the signing process and finally to countersign the document. It is likely the parties involved in a surrogacy arrangement might have numerous questions and need information and support throughout the process leading up to the signing of the contract and beyond. It would likely require clinics to develop new skills and knowledge in relation to the potential complexity of these contractual arrangements.
- 2.3.** We also question the role a fertility clinic or surrogacy organisation would be expected to fulfil should any legal dispute concerning a surrogacy arrangement later arise (for example, whether their role would be supplying information in legal cases testing the validity of pre-surrogacy agreements or whether clinics or surrogacy organisations would be liable if a contract was in

some aspect found to be unfair to any party in the contract or the clinic or surrogacy organisation did not warn the parties of a particular aspect in the contract etc). It is likely that the signing of the surrogacy agreement, including how this was supervised by the clinic or surrogacy organisation, and how the decision to counter-sign was reached, could be significant factors in a dispute. Therefore, clarity would be needed as to the responsibility and liability of the clinic or surrogacy organisation in supervising and counter signing surrogacy arrangements.

3. Consultation question 8

Consultation question 8

19.8 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?

19.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

- 3.1. The current requirements for the retention of records for patients undergoing regulated assisted fertility treatment are set out in General Direction 12: <https://www.hfea.gov.uk/media/1558/2017-04-03-general-direction-0012-version-3-final.pdf>.
- 3.2. This states that licensed centres must retain a record of certain information (relating to the patient, treatment and any child born etc) for a period of at least 30 years from the date on which any gametes or embryos were used in treatment, or, if not so used, the date on which any gametes or embryos were removed from storage.
- 3.3. We would like to highlight the practical difficulties that might arise if clinics have the legal duty to retain records for long periods of time. These could include scenarios such as clinics closing and not making adequate arrangements for their records to be retained or not giving patients information about where and how they can access those records once the clinic has closed. This may invite questions about whether clinics are the best long-term repository for records which may need to be referred to in the future and may have relevance when it comes to the legal status of individuals born through surrogacy.
- 3.4. We also believe it would be important that the Law Commissions consider what format these records should be in, ie, electronic or paper, and that this is clearly specified.

4. Consultation question 9

Consultation question 9

19.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

Paragraph 8.21

- 4.1.** We agree that it is undesirable to create a framework which could be seen to condone the importing of anonymously donated gametes. We believe that it is desirable to promote surrogacy arrangements where the child has access to full information about their genetic and gestational origins and that restricting access to the new pathway to arrangements where such information will be available would promote that aim.
- 4.2.** We do not consider the fact that patients outside of surrogacy arrangements are able to be the legal parents under UK law when using anonymously donated gametes (both egg and sperm) in countries which allow anonymous donation, to be inconsistent with the approach of denying access to the new pathway to those using anonymously donated gametes in a traditional surrogacy arrangement.
- 4.3.** We do not think that a direct comparison between legal parenthood within surrogacy arrangements and outside of them is useful here, as parenthood through surrogacy is a very particular form of parenthood involving an additional party and provoking different ethical considerations, including the concepts of commodification and exploitation discussed in chapter 2 of the consultation paper.
- 4.4.** We also note that with the increasing popularity of direct-to-consumer DNA testing and matching services, it would be ill-advised to set up new systems that revolve around anonymity, given the potential for these services to allow donors and donor-conceived people to be identified or their identity to be inferred via putting together other available information.

5. Consultation question 11

Consultation question 11

19.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

Paragraph 8.35

- 5.1.** We do not wish to express a position in response to the substance of this question, however, it is important for us to point out relevant factors from our regulatory perspective.
- 5.2.** We note that it is proposed that the right to object would operate by the surrogate sending her written objection to the body responsible for the regulation of surrogacy (which is proposed to be the HFEA).
- 5.3.** Should the HFEA become the regulator of surrogacy, we believe this would require us to oversee a legal process ie, a process by which ultimately the court will have to adjudicate on what should happen to the child. We question the value of the notification being sent to the regulator, as opposed to sending the objection directly to the relevant court, as at that time there isn't an established relationship for the regulator to register. We believe that the appropriate time for the regulator to be informed is when the surrogacy dispute is resolved. If the objection were to be sent to the regulator first, then a prescribed process would be necessary, by which the regulator must take further steps to initiate the necessary legal proceedings once it has received the notification. We consider that it is important that surrogacy organisation offers emotional support to all parties in the event of the surrogate making a notification of her objection.
- 5.4.** Additionally, if the written objection is sent directly to the body responsible for the regulation of surrogacy, we would then have to take further steps within a prescribed timeframe to progress the dispute to the courts. Unless the statute defines the process very clearly, we would also find ourselves in an untenable position if the surrogate misses the deadline, as to whether we should then reject the objection or, adopt a 'patient focussed' approach and let it proceed notwithstanding that it is a day or two late.

6. Consultation question 12

Consultation question 12

19.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

Paragraph 8.36

- 6.1.** As the potential regulator for surrogacy we have noted several points that we believe need to be considered. Our initial position would be that we are sceptical as to whether what is proposed, with reference to how the surrogate's right to object should operate, is workable from a regulatory perspective.

- 6.2.** Firstly, we note the burden the enforcement of this requirement could impose on the regulator, for example, we point to the possibility of a scenario where the intended parents are not in contact (or not in 'sufficient' contact to be comfortable to form a view) with the surrogate, or parents may otherwise feel unable to form this judgement in good faith, (given that 'lacking mental capacity' is usually only determined by a professional in relation to a specific issue e.g. with a patient).
- 6.3.** If the intended parents did not complete the declaration at all, for whatever reason, or gave an indication on the form that they didn't think their opinion was relevant or no conclusion could be made about this as their declaration, we would question what response the regulator would then need to make.
- 6.4.** We also can envisage a scenario in which the surrogate wants to challenge the view that has been expressed to us on her capacity (regardless of what that view is). She could also bring in a professional opinion (where she has been, for example, found by a doctor to have lacked capacity at a relevant time). We question whether it would be for the regulator to have to act on every occasion that intended parent(s) fail to declare that they believe the surrogate has capacity, or and whether there are likely to be some declarations that a regulator could or should not act on, for various reasons.
- 6.5.** Additionally, we would want clarity on how the regulator must handle any professional determination of the surrogate's capacity if that is sent to them, and what the expectation would be as to whether the regulator should be responsible for weighing any of this evidence/assertion up to see if this looks like an objective loss of capacity or not.
- 6.6.** We feel that it would be inappropriate for any regulator to issue intended parents with guidance on what the markers of lacking capacity may be in respect of their surrogate if parents are to be asked to provide this comment. However, we note that to make this proposal workable, an objective standard would need to be provided for parents to work to.

7. Consultation question 13

Consultation question 13

19.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

Paragraph 8.37

- 7.1.** We have noted several points we believe need to be considered as the potential regulator for surrogacy.
- 7.2.** Firstly, we raise concern as to the 'positive consent' required by the surrogate for entry into the new pathway where there is no declaration from the intended parents that they believe her to have had capacity to respond throughout the whole objection period. We question who would be responsible for seeking positive consent from the surrogate as part of a proper consent discussion and ensure that the consent is informed and voluntary - bearing in mind mental capacity issues could be an issue - and to whom the consent should be returned. It is unclear whether the regulator will assume responsibility for alerting the surrogate to the fact that the intended parents have not signed the declaration, thereby triggering the need for positive consent should the surrogate still desire to transfer legal parenthood to the intended parents.
- 7.3.** We question what the regulator should do if the surrogate had birth complications or something making it physically hard to provide consent, but posing no question around her capacity, given that this period for objection would be time-limited.
- 7.4.** It seems that the proposed requirement creates an additional burden for the surrogate by requiring that she make an additional declaration of her own simply because the intended parents may not feel able to, or otherwise be unable to, offer a subjective assessment of her capacity in good faith. This consequence alone may be enough to influence intended parents to state (irrespective of their real view) that the surrogate's capacity was never lacking in this period, which would not be an acceptable starting place for a regulatory requirement. We can also foresee the potential for false declarations to be made or for intended parents and surrogates to make conflicting declarations or to fail to make any declaration(s).
- 7.5.** All of the scenarios mentioned would make it very difficult for the regulator to oversee this process and determine at which point the pathway must be exited, if this responsibility was to fall to the regulator.

8. Consultation question 14

Consultation question 14

19.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

Paragraph 8.51

While we would want to be given the opportunity to consider this area in detail, we would broadly agree with the view expressed at 19.15 (3) that there should be no requirement for a welfare assessment of the child after his or her birth, provided that an adequate pre-birth assessment has already been made.

We would be in favour of the new framework imposing some kind of minimum criteria and procedure to apply in pre-birth welfare assessments, such that the future regulator can have an optimal framework to regulate against. The regulatory body must also be given appropriate regulatory powers to sanction surrogacy organisations (as we do with fertility clinics) if they fail to conduct assessments adequately in this area.

- 8.1.** In relation to 19.15 (1) and 19.15 (2): we would note that the HFE Act 1990 makes it a condition of every licence issued to a clinic, that:

'a woman shall not be provided with treatment services ... unless account has been taken of the welfare of any child who may be born as a result of the treatment (including the need of that child for supportive parenting).'

- 8.2.** The HFEA Code of Practice guidance for fertility clinics reflects this.

- 8.3.** The HFEA strongly supports the need for any new regulated pathway in surrogacy to make welfare of the child a central concern. As such, should the new pathway include traditional, domestic surrogacy arrangements, we would agree with the proposal that regulated surrogacy organisations should carry out welfare of the child assessments. As noted in the Consultation paper, surrogacy arrangements carried out by UK licensed clinics (which are generally gestational surrogacies) already must carry out welfare of the child assessments and comply with relevant Code of Practice guidance and we would consider that domestic surrogacy arrangements carried out outside of a regulated fertility clinic should be brought in line with this.

- 8.4.** The HFEA notes that, should the changes proposed in this question be implemented, careful consideration would need to be given as to how regulated surrogacy organisations can prepare

themselves for carrying out welfare of the child assessments; what training, skills and expertise may be required and how this will operate in practice, bearing in mind the fact that the structures, processes, areas of expertise and resources of licensed UK surrogacy organisations, are likely to differ from those of licensed UK fertility clinics. As such we would suggest that a statutory prescribed process or procedure or some minimum criteria for this assessment is required for surrogacy agencies around the appropriate conduct of welfare of the child assessments.

9. Consultation question 19

Consultation question 19

19.22 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?

19.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

(1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:

(a) for an order for appointment as guardian of the child, and

(b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or

(2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

Paragraph 8.81

- 9.1. We do not wish to express a view on whether option 1 or 2 is preferable.
- 9.2. We do wish to comment, with regard to option 2, on the need for a mechanism for verifying the details of the intended parents that are provided by the surrogate in the event that both intended parents died during the surrogate's pregnancy.
- 9.3. In practical terms, in this scenario we question how the regulator tasked with keeping a register would verify the accuracy of the details the surrogate provides and whether there would be any mechanism to compel the surrogate to provide this information if she failed to do so.

10. Consultation question 22

Consultation question 22

19.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:
 - (a) administrative, or
 - (b) judicial.

Paragraph 8.93

- 10.1.** We do not wish to state a definite view on this question, however, with reference to the suggestion of additional administrative oversight in part 2 of the question, if this were to fall to the regulator, we would strongly assert the need for clear regulatory powers in this regard and clear legal duties and any relevant enforcement powers.

11. Consultation question 30

Consultation question 30

19.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

Paragraph 9.29

- 11.1.** It seems consistent to us that a new pathway to parenthood which recognises the importance of the shared intention of the surrogate and the intended parents in entering into a surrogacy arrangement would include traditional arrangements, as well as gestational arrangements.
- 11.2.** Although we note that the available data is limited, as described in chapter 3 of the consultation paper, traditional surrogacy remains significant within domestic surrogacy arrangements.

Given that an aim of this law reform project is the creation of a better framework for surrogacy arrangements in general in the UK, it may follow that the exclusion of traditional arrangements could miss the opportunity to begin to support the conduct of those arrangements via regulatory oversight.

12. Consultation question 32

Consultation question 32

19.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

19.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

Paragraph 9.36

- 12.1.** We recognise that the proportion of surrogacy arrangements which are independent arrangements may be significant, but by definition, these are hard to estimate. Some people make an active choice to use independent surrogacy arrangements while others may do so through ignorance of alternative, regulated arrangements. For the record, we agree that the oversight, information provision and support (including legal advice and implications counselling) offered by regulated clinics and surrogacy organisations, is likely to be helpful in facilitating successful and safe surrogacy arrangements.
- 12.2.** However, in practical terms we do not believe that it would be feasible to bring independent surrogacy arrangements into the new pathway. We share the Law Commissions' concern (expressed at 9.33) that dealing directly with individual surrogates and intended parents involved in independent surrogacy arrangements, rather than with regulated clinics or surrogacy organisations, would be a radical break with the current regulatory model.
- 12.3.** With regard to the proposal at 9.34, for an independent professional such as a lawyer to provide evidence of compliance with the regulatory requirements, we consider this also to be impractical and difficult to implement.
- 12.4.** One significant concern would be that it is difficult to ensure consistency in how the independent professionals apply the regulatory requirements and what sanctions the HFEA would have at its disposal around this. Additionally, even if the independent professionals took on certifying that surrogacy arrangements had complied with the requirements for entry to the new pathway, the operational difficulty for the HFEA of setting up the necessary systems for reviewing and assessing returns regarding the individual independent surrogacy arrangements would likely be significant.

13. Consultation question 33

Consultation question 33

19.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;
- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and
- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

Paragraph 9.61

- 13.1.** In response to question (3), we believe that there is an opportunity here to learn from the framework that currently exists to ensure that any new framework is more workable and fits with a modern regulatory approach, with appropriate sanctions available.
- 13.2.** The Human Fertilisation and Embryology Act 1990 (as amended) currently requires that each licensed clinic has a Person Responsible (PR): *'The person responsible is ultimately responsible for ensuring that all licensed activities are conducted with proper regard for the regulatory framework that governs treatment and research involving gametes or embryos.'* (Interpretation of mandatory requirements 1B, HFEA Code of Practice).
- 13.3.** As such the HFEA can see the value in requiring that a surrogacy organisation appoint an individual responsible for ensuring that the organisation complies with regulation.
- 13.4.** We do, however, wish to draw the Law Commissions' attention to the fact that in our experience of regulating fertility clinics, this model has, on occasion, made it difficult to hold the PR responsible when, for example, something has gone wrong as a result of the actions of a staff member, rather than directly by the actions of the PR.

We also draw attention to the need, if surrogacy organisations are to have a Person Responsible role, for any legislation to prescribe the criteria for appointment of such individuals and perhaps even more importantly, provide the regulatory mechanisms to take action against PRs or individuals who flout the regulatory framework.

14. Consultation question 34

Consultation question 34

19.39 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?

19.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

19.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

Paragraph 9.62

- 14.1.** It seems likely that many of the requirements of a Person Responsible of a regulated UK fertility clinic could apply to the responsible individual of a surrogacy organisation. However, the requirements of the two roles would not be interchangeable and different skillsets would need to be developed for each role, given the substantial differences between surrogacy organisations and fertility clinics.
- 14.2.** The requirements of each role would need careful consideration, as would ensuring consistency in the regulation of surrogacy arrangements if the requirements for a responsible individual for a surrogacy organisation varied from that of a Person Responsible at a HFEA licensed clinic, as would likely be necessary.
- 14.3.** There are some inadequacies of the current PR model in relation to fertility treatment and we would hope that any new model would seek to improve upon this.

15. Consultation question 37

Consultation question 37

19.44 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?

19.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Paragraph 9.95

- 15.1.** The HFEA does not wish to express a view as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.
- 15.2.** However, we do wish to comment, in response to 19.44, that the HFEA agrees with the point raised at 9.92 of the paper, which states that (should the Law Commissions' proposal that matching and facilitation services are to be limited to regulated surrogacy organisations) consideration would need to be given to the sanctions available against organisations that offered matching and facilitation services without being regulated to do so. We agree also that legislation would need to provide for sanctions against those who offered the services without being a regulated surrogacy organisation.
- 15.3.** 9.93 of the consultation paper states that '*the HFEA 1990 provides for various criminal offences for persons who carry out licensed activities (such as the creation of an embryo, which occurs in*

IVF treatment) without being in possession of the required licence.' However, it is important to note that although it is a criminal offence to undertake certain (but not all) licensable activities without a licence, in practice people are able to escape punishment while undertaking licensable activities without a licence. This is because the HFEA cannot regulate what it does not license. The growing world of internet activity, which is difficult to monitor, means that it is all the more important to learn from the current model when developing any new system of regulation, to ensure that the legislation and regulation fulfil their purpose.

16. Consultation question 39

Consultation question 39

19.47 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. 19.47 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?

19.48 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

- 16.1.** We can understand why the Law Commissions propose that the HFEA takes on the regulation of regulated surrogacy organisations. Many surrogacy arrangements use fertility treatments, often in licensed fertility clinics, and as the regulator of those services it might seem logical to extend our remit as suggested. However, the proposal does raise a number of fundamental difficulties, which would need to be addressed if the HFEA were to take on these responsibilities.
- 16.2.** The first point to note is that expanding the HFEA's remit to include the regulation of regulated surrogacy organisations and the oversight of compliance with a proposed new pathway would not be a simple matter of adding these areas on to the HFEA's existing remit. We note that the Law Commissions state in 9.113 that under these proposals '*the Authority's role should be to provide guidance on how regulated surrogacy organisations and clinics should carry out their duties.*' However, that is far more complex than it sounds. Developing a framework for what constitutes a good surrogacy organisation is something which would be both far removed from the HFEA's current remit and something for which there is no clear equivalent model.
- 16.3.** The Law Commissions suggest that this could be done by an expansion of the Surrogacy Guidance Note in the Code of Practice dealing with surrogacy, but we consider that this would not be sufficient and would more likely require either a substantial change to our existing Code, or the creation of an additional surrogacy Code to sit alongside the existing one.

- 16.4.** This issue requires a little more explanation. The current Code is largely designed to offer guidance to the fertility sector on how it should go about meeting standards of quality and safety in patient care and focuses on processes and procedures allied with medical treatment. By having an HFEA licence, clinics are required (though not mandated) to comply with Code of Practice guidance. Were non-medical not-for-profit surrogacy agencies to be licensed by the HFEA most of the Code would be irrelevant to them.
- 16.5.** It therefore follows that any new legislation would need to make provision for any new guidance relating to surrogacy, whether published in the Code of Practice or in some other form, to be applicable to licensed surrogacy agencies in such a way that non-medical not-for-profit agencies did not have to comply to the remainder of the current HFEA Code.
- 16.6.** Given this, a key question would be whether it is preferable to accommodate surrogacy organisations into the existing framework or whether a new additional framework would be required that has been designed specifically to work for the regulation of surrogacy.
- 16.7.** Though there are arguments both ways, we would probably favour the development of a new system to sit alongside the current framework, linking with the current system where that is necessary or desirable. We believe that such a system would be clearer for surrogacy providers and licensed fertility clinics alike.
- 16.8.** We also note at 9.113 that the Law Commissions outline that our duties as the regulator of surrogacy organisations would include oversight of the eligibility and screening requirements necessary (including welfare of the child checks) for a surrogacy arrangement to fall within the new pathway to legal parenthood. We think that this could be operationally challenging and the processes for ensuring this is being carried out correctly would need to be robust with appropriate sanctions available for non-compliance.
- 16.9.** Whether a new system of regulation is developed or changes are made to the existing framework, the impact and resource implications for HFEA will be considerable. We are not in a position at this stage to set out the work required in detail, but the following tries to illustrate the issues that will need to be addressed.
- 16.10.** As noted above, our current systems are geared towards assessing compliance with an existing framework largely focussed on the quality and safety of patient care in a medical context. The new surrogacy framework, other than where surrogacy involves fertility treatment, is going to encompass so much more than medical treatment and our inspection and licensing schemes would need to be revised to reflect that. We would need time to develop any new systems and processes needed and would need to consider how the licensing and inspection systems would work.
- 16.11.** Given current workloads, any new inspection regime for surrogacy will need to be serviced by additional inspectors who have been trained in the specifics of the new surrogacy framework and an entirely new licensing process will need to be developed to accommodate the licensing of non-medical entities.

- 16.12.** Were the HFEA to take on the regulation for surrogacy this would also have implications for the workload of some of our Board members, who would probably be required to take some licensing decisions.
- 16.13.** Decisions would need to be made as to how surrogacy organisations would submit information to us (and which information that would be) and which of the PR requirements would apply. We would need to consider consistency of regulation/use of forms (if forms were required) and guidance for surrogacy agreements being overseen at licensed clinics and at surrogacy organisations. We will also need to consider the extra burden that taking consent for surrogacy agreements and keeping a record of these agreements will place on clinics.
- 16.14.** We would need to consider if our Register could accommodate the extended remit. If it could, then we would need to consider how this could be achieved. If it could not, then we would need to consider what alternative would be possible, for example, whether an additional register is required and if so, what the legal position of the new register would be. We would also need to consider whether or how to link to the records contained in the existing HFEA register which pertain to the treatment of intended parents and surrogates having treatment in licensed fertility clinics.
- 16.15.** Information provision for donors, donor conceived people and their families would also be a key concern - there would need to be clarity as to who could access information about whom and in which circumstances. To give just one example, could an individual access information about their intended parents even if the surrogacy arrangement broke down and if so, whether all intended parents would need to provide donor goodwill messages. In all cases we would need to consider the impact on clinics and patients, including impact on resources, processes and the personal impact on those involved.
- 16.16.** The number of surrogacy arrangements in the UK is currently relatively small, although there is some uncertainty about the figures because not all arrangements are known about by the authorities. We suggest that there might be growth in numbers of surrogacy arrangements if a new regulatory framework comes into being – perhaps because people feel the new framework offers them better safeguards. This potential for uncertainty could also create some difficulty for a future regulator in terms of longer-term resource planning.
- 16.17.** However, even if the number of surrogacy arrangements was to remain small, the burden of expanding the HFEA's remit in the way the Law Commissions propose would be significant and we would require additional resources, both in terms of the potentially significant start-up costs and annual running costs.

17. Consultation question 42

Consultation question 42

19.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

Paragraph 9.145

- 17.1.** The HFEA does not wish to express a position on whether the current ban on advertising in respect of surrogacy should be removed.
- 17.2.** However, we note the need for careful consideration to be given to which powers the Advertising Standards Agency (ASA) and/or surrogacy regulator would have in the event that unregulated entities are found to be advertising unlawfully and whether current ASA powers would suffice or not. Any surrogacy provider would also have to ensure they are compliant with other legislation including consumer law.
- 17.3.** We also note that the removal of the ban on advertising in respect of surrogacy might constitute a significant cultural change for the UK, which could attract considerable public interest and perhaps criticism, of which a regulator would naturally be the focus. This could be a resource consideration for a future regulator.

18. Consultation question 47

Consultation question 47

19.56 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?

19.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

Paragraph 10.102

- 18.1.** In response to Q47 19.56, we agree with the view expressed at 10.1 of the consultation paper that it is important for a child to be able to access information about the circumstances of his or her conception and gestation. We therefore agree in principle with this proposal to create a

national register of surrogacy arrangements to record the identity (plus any specified non-identifying information) of the intended parents, the surrogate and the gamete donors; in order to be able to share this information with the relevant parties at their request and in line with applicable legal provisions.

- 18.2.** In response to Q47 19.57, the HFEA already maintains a Register of Information for those involved in donor-assisted conception which has been specifically developed to meet the needs of the HFE Act, and we can see therefore, for reasons of cost and practicality, why the HFEA may seem to be the appropriate organisation to design, initiate and maintain a new register recording information of all surrogacy arrangements. Additionally, we recognise that the HFEA taking on this responsibility could avoid the duplication of some information, for example information relating to surrogates who are also donors, who are already recorded in our Register.
- 18.3.** The HFEA has no legal power to hold information on our existing Register relating to treatment that takes place outside of an HFEA licensed clinic. We therefore have no legal power to hold information on the Register relating to treatment that takes place abroad.
- 18.4.** If it is decided that the HFEA should become the regulator of surrogacy arrangements, then it makes sense for it to also maintain any register of such arrangements. However, as we have made clear in our response to consultation question 39, this would not be straightforward and would require considerable planning and resources. We have not yet been able to consider properly the feasibility, practicality and implications of us taking on the responsibility for a register, but we are happy to share initial thinking at this stage.
- 18.5.** Our initial view, is that any extension of the remit of the HFEA's current Register to include surrogacy arrangements, or creation of an additional register to be maintained by a regulator would not represent any simple extension of the system and processes already in place at the HFEA because these have been developed to support the HFE Act, working closely with licensed fertility clinics.
- 18.6.** The additional burden of assuming responsibility for the design, initiation and maintenance of a new register of surrogacy arrangements would be significant and complex for any organisation. The recording and disclosing of information about surrogates, intended parents and surrogate-born children, relating to a variety of different forms of surrogacy, including potentially those arranged through fertility clinics, through regulated surrogacy organisations and professional intermediaries as well as independent arrangements, is likely to involve more than a significant internal overhaul of the HFEA's current processes for collecting, maintaining and disclosing information.
- 18.7.** In response to Q47 19.57 (parts (1) and (2)) our initial response is that it would be suboptimal to try to adapt our current Register. It seems more likely from our initial consideration, that it would be preferable to authorise and develop a new, separate, but parallel and complementary surrogacy information register.
- 18.8.** One of the difficulties we identify is that even though we currently record information about the parties to a surrogacy arrangement on the register, there is no mechanism for the offspring, or existing children of the surrogate or intended parents, to access that information. Thus, if the Law

Commissions propose that the HFEA simply adapt the existing register to accommodate the disclosure of information in surrogacy scenarios, it needs to be ensured that we are given a statutory power to facilitate that disclosure.

18.9. Experience tells us that ensuring the quality and consistency of the information collected from a variety of licensed clinics, regulated surrogacy organisations of different types and professional intermediaries will be essential, and we would need specific powers to ensure that data was submitted of a suitable quality.

18.10. With regard to Q47 (3), we understand that the Law Commissions propose that all necessary information is recorded about the child's genetic heritage and reported to the HFEA only at the point when a parental order is made. We question what the proposed mechanism would be for collecting this information and what the implications would be for the regulator or for the fertility clinic. We think it may be difficult at that late stage, if people provide incomplete or incorrect information, for us to follow up with them to correct the information for register purposes. Some thought also needs to be given to the information pathway i.e. the interplay between what is currently recorded on the register in surrogacy cases and when, and what the Law Commissions propose should be recorded on the register (and when and how), as it will be important not to create two different regimes that do not marry well.

18.11. We understand that the reference to anonymous gamete donors would only relate to use for a genetic sibling use.

19. Consultation question 48

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.

Paragraph 10.104

- 19.1.** Non-identifying information about gamete donors is already included on the Register where a licensed clinic is involved in a surrogacy arrangement where donor gametes are used, however surrogates are not regarded as donors, even where the surrogate's own eggs have been used. Surrogates are regarded as patients and registered accordingly, this means that far less detail about the surrogate is currently recorded on the register than is the case with donors. The Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations allow donor-conceived individuals to access various non-identifying information from the age of 16.
- 19.2.** This information includes: the height, weight, ethnic group and eye colour of the donor; the screening tests carried out on him or her; his or her personal and family medical history and whether the donor has children; and the donor's religion, occupation, interest and skills and why he or she donated.
- 19.3.** As mentioned in our response to consultation Q47, we believe that it is important for a child to know the circumstances of his or her conception and gestation. In principle, therefore, the HFEA would support the inclusion of non-identifying information about the surrogate and the intended parents being recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.
- 19.4.** However, to reiterate our response to Q47, the recording and disclosing of information about surrogates, intended parents and surrogate-born children, relating to a variety of different forms of surrogacy, including potentially those arranged through fertility clinics, regulated surrogacy organisations and professional intermediaries, as well as private arrangements, would involve a significant overhaul of the HFEA's current processes for collecting, maintaining and disclosing information, regardless of whether this were incorporated on to the existing register or added to an additional bespoke and parallel register.
- 19.5.** As mentioned in response to Q47, even though we currently record information about the parties to a surrogacy arrangement on the register, there is no mechanism for the offspring, or existing children of the surrogate or intended parents, to access that information. We note that a new framework would need to grant information access rights to the appropriate individuals where the existing legal framework does not provide this. Thus, if the Law Commissions propose that we simply adapt the existing register to accommodate the disclosure of information in surrogacy scenarios, it needs to be ensured that we are given a statutory power to facilitate disclosure.

- 19.6.** We also take this opportunity to repeat the concerns raised in our response to Q47 regarding the need to ensure that the information submitted is of a suitable quality and the range of powers required by any future regulator.

20. Consultation question 49

Consultation question 49

19.59 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?

19.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

Paragraph 10.110

- 20.1.** In response to Q49 19.59, we agree with the Law Commissions' proposal 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.*'
- 20.2.** As outlined in our responses to consultation questions 47 and 48, where donor gametes are used in treatment which takes place through a licensed clinic (including in a surrogacy arrangement), The Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations allow donor-conceived individuals to access various non-identifying information at the age of 16.
- 20.3.** The regulations also permit donor-conceived people over the age of 18 years to access identifying information about their donor, where the donor was registered with the HFEA after 31 March 2005 or where a donor who was previously non-identifiable (i.e. registered with the HFEA prior to 31 March 2005), has subsequently re-registered as an identifiable donor.

- 20.4.** We agree with the provisional view expressed at 10.107 of the consultation paper that one merit of the approach proposed in Q 49 would be consistency with the legislation which governs access to information by donor-conceived individuals.
- 20.5.** We do not consider that there is any reason that surrogate-born individuals should be treated any differently to donor-conceived individuals with regard to the information which is accessible to them from the register at age 16 and at age 18 and under which circumstances this information is accessible.
- 20.6.** However, we would like to highlight that the relationships involved in surrogacy arrangements go far wider than current donor treatment does and thus the new framework will need to reflect this. While non-identifying information about the donor(s) is currently held on the register, in relation to the surrogate and intended parents, only limited information is provided.
- 20.7.** Any new framework will therefore have to ensure that the appropriate individuals involved in a surrogacy arrangement are granted information access rights, given that the current framework only allows donor-conceived people to access information about their donor.
- 20.8.** Operationally we also do not believe that it is desirable to have any other barriers to the request by the relevant parties to have access to register information, apart from a suitable opportunity to receive proper counselling. In practical terms we question how the regulator would know whether the legal parents had in fact consented to such an information access request or not, and what would happen in scenarios where an individual had lost contact with their legal parents etc, and then wished to make an information access request.
- 20.9.** We would also be concerned about the additional resource burden this would place on the future regulator, as this would mean having the counselling provision available to service the potential counselling requirement of a greater cohort of people than is now the case.

21. Consultation question 50

Consultation question 50

19.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Paragraph 10.114

- 21.1.** We understand this question to refer to the possibility of someone finding out about another person carried by the same surrogate, but where there is no genetic connection between the two surrogate-born individuals.
- 21.2.** We do not wish to provide a view on whether the provision mentioned in Q50 should be introduced or not. However, as noted elsewhere in our consultation response, the important point for us is that the new legal and regulatory framework will need to make provision for the

appropriate data to be reported and retained on the register and provide access rights for the relevant individuals.

- 21.3.** In terms of the potential scenario in Q50, the existing legal and regulatory framework does not necessarily accommodate some of what is proposed in terms of the retaining and disclosure of information. We would also need to consider how far what is proposed could be accommodated within our current Register.

22. Consultation question 51

Consultation question 51

19.62 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?

19.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

Paragraph 10.121

- 22.1.** In order to avoid an individual intending to marry, or enter into a civil partnership or intimate physical relationship with a donor-conceived sibling, there is legal provision such that people aged over 16 who are thinking about starting a physical relationship together, can make a joint application to the HFEA access register information to find out whether they are genetically related.
- 22.2.** We would point out that the framework to enable any equivalent provision in the case of people born through surrogacy must be specifically put in place for that purpose. The new legal framework will need to make provision for the appropriate data to be reported and retained on the register and provide access rights for the relevant individuals. We also note that the existing framework does not necessarily accommodate some of what is envisaged in this section.
- 22.3.** We also wish to highlight this issue in cases where a surrogacy arrangement breaks down and to prompt some consideration of the register details that need to be recorded in those circumstances and appropriate information access rights. By way of illustration, at present in the existing framework, a child born to a surrogate using the intended parent's gametes would not be able to access data about the intended parents because the intended parents are not recorded on the register as donor. Although the new pathways should limit the chances of this happening, if there remains any chance that a surrogate could end up remaining the child's legal mother, some thought needs to be given to what information is captured on the register, how it is captured and the corresponding information access rights.

23. Consultation question 52

Consultation question 52

19.64 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:

if they are genetically related through the surrogate; and/or

if they are not genetically related through the surrogate.

Paragraph 10.123

23.1. We would refer again to the points we made in response to Q50 and Q51.

23.2. In both the above scenario and the scenario where individuals are not genetically related through the surrogate (as referred to in part (2) of this question), we again wish to emphasise that the new framework will need to make provision for the appropriate data to be reported and retained on the register and provide access rights for the relevant individuals. We also note that the existing framework does not necessarily accommodate some of what is envisaged in this section.

24. Consultation question 53

Consultation question 53

19.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

24.1. See our comments in 21.2 above. We also note that the existing framework does not necessarily accommodate some of what this question refers to.

25. Consultation question 54

Consultation question 54

19.66 We provisionally propose that the six-month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

Paragraph 11.20

25.1. In principle, the HFEA agrees with the provisional abolition of the six-month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application. The HFEA acknowledges

the discrepancy between the case law on this requirement and the wording of the statute and supports the legislation better reflecting reality i.e. that courts frequently make parental orders in respect of children older than 6 months and have granted parental orders where applications were made as long as 13 years after the birth of the child.

- 25.2.** Most importantly, the HFEA takes the view that barring the submission of a parental order made late, may not serve the best interests of the child.

26. Consultation question 59

Consultation question 59

19.72 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?

19.73 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.

19.74 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?

Paragraph 12.64

- 26.1.** We do not wish to express a view on whether double donation should be permitted or not and under which circumstances.
- 26.2.** From a regulatory point of view, we would like to highlight the importance of defining what amounts to 'medical necessity' in the legislation. In the absence of a sufficiently clear statutory definition, the regulator will be the body tasked with defining what amounts to medical necessity and we can see that being a considerably difficult task.
- 26.3.** If the HFEA were to be the regulator, we would need a definition, or at least clear principles that could be applied (for example such as with the seriousness test with PGD which we use to guide us when deciding what conditions we will allow testing for).

27. Consultation question 60

Consultation question 60

19.75 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?

Paragraph 12.71

- 27.1.** We do not wish to express a view on the question asked, however, we would like to reiterate the points made in our response to Q59: the importance of the legislation including a statutory definition of what amounts to 'medical necessity'.

28. Consultation question 61

Consultation question 61

19.76 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?

Paragraph 12.76

- 28.1.** We note that section [12.51](#) of the full consultation document states that: *'A requirement for a genetic link is a clear way to distinguish between surrogacy and adoption. Some stakeholders expressed the view that the salient difference between adoption and surrogacy is the intentions of the intended parents in bringing about the life of the child. Although genetic parentage is not the key difference, a genetic link does offer proof that the intended parents were involved in bringing about the conception of the child. It appears to us that the distinction between surrogacy and adoption (and the protections of adoption) could be preserved so long as the intended parents are involved in the child's conception. Safeguards may be needed to ensure that, absent a genetic link, there is evidence of their involvement in conception.'*
- 28.2.** From a regulatory perspective, we would suggest further consideration is made around what would be the regulators' role in relation to these safeguards, if they were to be introduced. What might evidence of the intended parents 'involvement in conception' consist of, how would this need to be evidenced, and generated by which party in the surrogacy arrangement, and the evidence demonstrated to whom? This deliberation would be helpful so that if this kind of evidence is needed as a safeguard, it can be considered how best a regulator might inspect against this evidence, in order to make this safeguard as effective as possible.

29. Consultation question 62

Consultation question 62

19.77 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.

19.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

Paragraph 12.94

- 29.1.** The HFEA is not in a position to comment on Q19.77.
- 29.2.** In response to Q19.78, the HFEA is also not in position to suggest how a test of medical necessity for surrogacy on the part of the intended parent/s should be defined or assessed. We note however that the Law Commissions have made a proposal at 12.93 (p290 of the [full discussion document](#)) that this might encompass wording such as *'For medical (whether physical or mental) or biological reasons, the single intended parent is, or both intended parents are, unable to gestate a foetus to term, or deliver a healthy baby.'*
- 29.3.** As stated in the consultation paper at 12.88, *'there are numerous reasons why an individual could fall within a definition of medical necessity related to both her physical and mental health and the health of the resulting baby'*. Should the 'medical necessity' of the intended parent/s become prerequisite for surrogacy arrangements, the regulator of such arrangements will need a statutory definition that is both clear and workable in practice, supported by clear principles to accompany them. Without a clear statutory definition and principles to work from, it will be untenable for a regulator to determine what amounts to 'medical necessity' in the case of any female intended parent or both members of a same-sex female intended parent couple.
- 29.4.** We can envisage that there may be some circumstances where a need for an individual assessment of the female IP to establish 'medical necessity' would need to be carried out by a suitably trained or qualified person, and we would recommend that this role in itself and the relevant process should be carefully considered in the development of any new definition.
- 29.5.** When those tasked with this are drafting principles and a definition, we would encourage them to also consider providing clear examples of scenarios that would constitute, or definitely be excluded from, 'medical necessity'.

30. Consultation question 63

Consultation question 63

19.79 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?

19.80 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.

19.81 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?

Paragraph 12.115

- 30.1.** We note the Law Commissions' proposal that '*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.*'
- 30.2.** We have some concerns about this proposal. Firstly, in regard to fertility clinics having to provide this information, we note that a requirement for them to provide this kind of information would represent a significant departure from what is required currently of clinics offering a surrogacy arrangement - currently we don't ask for example, that scans of passports or birth certificates be sent to us.
- 30.3.** With reference to surrogacy organisations, it would be a new procedure for us to ask for this kind of 'evidence' from third party surrogacy providers. We would suggest that it is not required this be submitted to the register, but that it forms part of the auditing which the regulator would need to perform on this new sector.
- 30.4.** Please also see responses we have made above to issues relating to a new or adapted register, which would need to be explored in due course.

31. Consultation question 64

Consultation question 64

19.82 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?

19.83 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.

19.84 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?

Paragraph 12.133

- 31.1.** In response to 19.82 we agree that there should be no maximum age limit for the granting of a parental order and 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.
- 31.2.** 8.9-8.21 of the HFEA Code of Practice sets out the welfare of the child assessment process for surrogacy arrangements, including factors which should be considered during the process, circumstances where further information should be sought, circumstances where treatment should be refused and record keeping.
- 31.3.** 8.14 states that '*The centre should consider factors that are likely to cause a risk of significant harm or neglect to any child who may be born or to any existing child of the family. These factors include any aspects of the patient's or (if they have one) their partner's: [...] (b) **past or current circumstances that are likely to lead to an inability to care throughout childhood for any child who may be born**, or that are already seriously impairing the care of any existing child of the family[...]*'
- 31.4.** We consider that this guidance is sufficient in ensuring the welfare of the child without specifying a maximum age limit for the intended parents. Following the same rationale, our response to 19.83 is that we do not believe that under the new pathway there should be a maximum age limit for intended parents.
- 31.5.** In response to 19.84, we agree with the position stated at 12.119 of the consultation paper, that requiring intended parents to be at least 18 years old is sensible, in terms of promoting the welfare of surrogate-born children.
- 31.6.** We note that there are implications suggested for future regulator here, which we would agree with, that the consultation document suggests that at '12.132, on p.297, "*If an age limit is not imposed in the new pathway for intended parents then, in order for their age to be taken into account in the welfare assessment before the child is conceived, **the age of the intended***

parents would have to be added to the Code of Practice as a specific consideration (in contrast to the age of the surrogate, the Code of Practice does not currently refer to the age of intended parents).'

32. Consultation question 65

Consultation question 65

19.85 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?

19.86 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?

Paragraph 12.144

- 32.1.** We agree that imposing a strict minimum age requirement for surrogates has the benefit of clarity and simplicity.

33. Consultation question 66

Consultation question 66

19.87 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?

19.88 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

- 33.1.** As mentioned at 13.11, the HFEA Code of Practice already requires clinics to satisfy itself that potential surrogates are '*suitable to act as a surrogate*', which includes considerations of her '*age, medical history, previous obstetric history, mental health, body mass index*'. The Code of Practice also requires that intended parents who are providing gametes '*must be screened in line with requirements for gamete donors*', which includes screening for sexually transmitted infections and autosomal recessive genes.
- 33.2.** As far as surrogacy arrangements conducted in UK licensed clinics (which are mainly gestational arrangements) are concerned, it seems sensible to include as an eligibility requirement for the new pathway the screening that is currently done as a matter of practice. The HFEA agrees that

medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes is beneficial. This is for the reasons outlined at 13.12 of the consultation paper (for the protection of the surrogate, by ensuring that pregnancy and childbirth do not pose special risks to her health and for the protection of surrogate-born children from sexually transmitted infections and serious medical conditions).

- 33.3.** In fact, we would like the Law Commissions to go further - we believe it is desirable for more rigorous testing to be carried out than is the case under the current regime, in order to better protect surrogates and surrogate-born children, in particular in light of some cases we are aware of where surrogates/surrogate-born children were not adequately protected from harm. We wish to advocate for the Law Commissions to include more rigorous medical screening as a requirement for eligibility for the new pathway.
- 33.4.** While in principle the HFEA would support the same health screening to be required for traditional surrogacy arrangement taking place outside of clinics, for the reasons outlined in the paragraph above, from a practical perspective this would need closer consideration as to its feasibility. While we note that while some surrogacy agencies already conduct medical checks on surrogates, their partners, and intended parents, this is not currently required.
- 33.5.** We would ask whether it would fall to all surrogacy organisations operating within the new pathway to coordinate this testing and quality-assure it. We also would question what powers the surrogacy organisations (or other organisations/s responsible for the co-ordination of the testing) and the body regulating surrogacy would have at their disposal if testing was not carried out correctly, or at all.
- 33.6.** We also agree with the concern raised by the Law Commissions at 13.15 that such testing may be difficult to implement in relation to independent, traditional surrogacies.
- 33.7.** Q 66 19.88: Please see response to Q 66 19.87.

34. Consultation question 67

Consultation question 67

19.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

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

the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

Paragraph 13.44

- 34.1.** The HFEA takes the view that all parties considering entering into a surrogacy arrangement should fully understand what they are entering to enable them to give informed consent. As noted at 13.18 of the consultation paper, S.13(6) of the HFEA 1990 requires that '*appropriate information*' is given when an individual seeks treatment services.
- 34.2.** 4.4 of the HFEA Code of Practice (9th edition) states in '*cases involving third party donation and surrogacy arrangements, our expectation is that the discussion of implications should be delivered by a qualified counsellor.*'
- 34.3.** The HFEA agrees with the position outlined at 13.19 of the consultation paper which states the importance of all parties understanding '*the potential risks to physical and mental health, the potential emotional impact of the arrangement, the intention for the intended parents to parent the child, and the possibility of the arrangement breaking down.*' We also agree that consideration of the welfare of the child should be the paramount consideration.
- 34.4.** We understand the Law Commissions' reference here to counselling to refer to 'implications counselling' i.e. one or more pre-treatment counselling sessions which support informed decision-making, through allowing individuals a chance to explore the implications of entering treatment, on themselves and their families (including emotional, legal implications etc.) This is as opposed to therapeutic counselling, which is a voluntary undertaking, may be an ongoing process including one or more sessions, and is more emotions-focused with a view to improving psychological wellbeing.
- 34.5.** We note that the Law Commissions' proposed requirement for [implications] counselling to become a requirement for the surrogate, her spouse, civil partner or partner (if any) entering the new pathway to parenthood, goes further than the current requirements.
- 34.6.** While the HFEA agrees that is very important for implications to be discussed with all parties entering a surrogacy arrangement, and we state at Guidance Note 4.4 of the Code of Practice that this should be with a qualified counsellor, we also would point out that the proposal for the take-up of counselling to be a requirement of entry to the new surrogacy pathway, departs from all other areas of assisted conception. Thus, if it is considered desirable for counsellors working in surrogacy to meet these requirements, then consideration should be given to whether it is mandated in some way in the new framework, or whether, as is the case now, it remains as guidance rather than being mandatory. Careful consideration would also need to be given to how making counselling a requirement of entry to the new surrogacy pathway might affect clinics practically, and on how this might affect patients, for example, whether this could impact waiting times.

35. Consultation question 68

Consultation question 68

19.90 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?

Paragraph 13.65

- 35.1.** The HFEA Code of Practice reflects the importance of independent legal advice in surrogacy arrangements, telling clinics that they should advise patients that surrogacy arrangements are unenforceable and that they are encouraged to seek legal advice about this and any other legal aspect of surrogacy (14.4 of HFEA Code).
- 35.2.** We agree with the Law Commissions' statement that independent legal advice will help to ensure that all parties are protected and reduce any risk of exploitation. We also note that, as noted at 13.53, the proposed pathway to surrogacy which requires a surrogacy arrangement to be agreed as one of the steps towards obtaining legal parenthood by the intended parents, means that there will likely be an even greater importance for independent legal advice, if the Law Commissions' proposed changes related to the surrogacy agreement are implemented.
- 35.3.** Furthermore, we agree with the Law Commissions' point at 13.54, which points to the increased need for independent legal advice should, as is proposed under the Law Commissions' proposal, the financial terms of a surrogacy agreement become enforceable by the surrogate.
- 35.4.** 13.53: Most importantly, because the surrogacy agreement required by the new pathway is one of the steps towards the attribution of legal parenthood to the intended parents, we think that the law should go further. We are provisionally of the view that the law should require that the intended parents and the surrogate receive independent advice on the legal implications of the agreement. They may also wish to receive legal advice about the drafting of the agreement and for their lawyer to suggest any changes to that drafting, bearing in mind that party's particular needs and interests.
- 35.5.** We recommend that careful thought is given to the potential for the costs involved in legal advice to impact on accessibility of the new pathway, particularly in light of other financial implications of surrogacy and any previous ART intended parents may have accessed.

36. Consultation question 69

Consultation question 69

19.91 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?

19.92 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.

Paragraph 13.73

- 36.1.** The HFEA supports the importance of the protection of surrogate-born children, for example (as noted by the Law Commissions at 13.66 of the full consultation paper to prevent individuals convicted of child sex abuse from becoming parents through surrogacy). We also note that many surrogacy organisations already include criminal background checks of intended parents and surrogates as part of their processes.
- 36.2.** One concern we have, however, with what is proposed in Q 69 is requiring intended parents to complete criminal background checks creating a disparity with what is required from other parents going through fertility treatments without surrogacy. Especially if the HFEA are to regulate fertility treatments with and without the use of surrogacy, this seeming inconsistency of approach could create a difficult position for us.
- 36.3.** We note the Law Commissions' point at 13.71 of the full paper, which suggest the '*checks conducted as part of the adoption process provide a good model [...] the adoption agency must obtain an enhanced criminal record certificate for any prospective adopter or any member of his or her household aged over 18.*' Firstly, we would not necessarily consider the model of adoption processes as being easily transferable to surrogacy arrangements with regard to criminal records checks, due to the many differences between the two processes.
- 36.4.** From a practical point of view, we would also note the additional burden this could place on surrogacy organisations and fertility clinics. We note 13.72 of the full consultation paper: '*The certificate [enhanced criminal record certificate] should be reviewed by the licensed clinic, regulated surrogacy organisation, or independent professional such as a lawyer, whoever is involved in overseeing the arrangement. We provisionally propose that they should not enable a surrogacy arrangement to be entered into where any person who is screened has been convicted of, or received a police caution for, one of the offences on the prescribed list and, in addition, consider any other offences not on that list, in order to assess the suitability of the parties, so that anyone who might present a risk of harm to a child can also be excluded. The adoption process*

provides a good model, and we suggest the same process and eligibility criteria in relation to offences against children or sexual offences should apply.'

- 36.5.** While it may be relatively straightforward to review a certificate to identify 'offences on the prescribed list' (13.72 of the full consultation paper), we believe it could be more difficult for clinics, surrogacy organisations or independent professionals to 'consider any other offences not on that list, in order to assess the suitability of the parties' (also 13.72). We question how they would make this decision, who would be ultimately accountable for the decisions made and how consistency would be ensured across different organisations, clinics and individuals.

37. Consultation question 72

Consultation question 72

19.95 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.

Paragraph 15.16

- 37.1.** The HFEA does not at present wish to express a view on which, if any, of the suggested options 1,2 and 3 would be an appropriate way for the intended parents to pay costs to the surrogate. We believe that in addition to the consideration which would be needed to be given in terms of the practicality of implementing each of the proposed options, including the burden on the surrogate, the intended parents and those charged with processing any payment of costs, the views of surrogates and intended parents must also be taken into account and any intentional or unintentional consequences which may arise from a change to the existing system of payment of costs must be considered.
- 37.2.** More generally, the HFEA takes the view that any change to the current arrangement for the payment of surrogate expenses should prioritise the creation of a system which is honest, transparent and fair. While the current system of the payment of expenses may not be as transparent as it could be, we also are cautious about the implementation of a new system of 'categories of payment' and the fact that defining the boundaries of each category could be difficult for the regulator and that those using the new system of categorisation, including surrogates and intended parents, fertility clinics and surrogacy organisations may find this confusing.

38. Consultation question 73

Consultation question 73

We invite consultees' views as to:

whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and

the types of expenditure which should be considered "essential".

Paragraph 15.22

- 38.1.** The HFEA would in principle agree that intended parents should be able to pay the surrogate essential costs related to the pregnancy. The HFEA agrees with the principle stated at 15.17 that the surrogate should not be left financially worse off due to the pregnancy. We do not wish to make any suggestions as to which items should, or should not, be considered 'essential'.

39. Consultation question 79

Consultation question 79

19.102 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.

19.103 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.

19.104 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.

Paragraph 15.53

- 39.1.** The HFEA does not wish to comment on the question of whether it should be possible for the intended parent to agree to pay a woman for the scenarios described in Q 79 19.102.
- 39.2.** Whilst we recognise the value in a fixed compensation system, which would enhance certainty, it would require consultation and regular review to ensure fairness and fitness for purpose. If conducted by the regulator and the HFEA becomes the regulator, this would necessitate bringing in new expertise, as well as initial and ongoing financing and support.
- 39.3.** If such a system was introduced, it would be vital for the regulator to have appropriate powers to sanction where the payment scheme is not being adhered to and the new legislation would need to make very clear how this system of compensation would operate in practice. This should include guidance on what should happen if unforeseen situations occur.

40. Consultation question 81

Consultation question 81

19.106 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.

Paragraph 15.60

- 40.1.** We do not wish to comment on whether intended parents should be able to buy gifts for their surrogate.
- 40.2.** We would suggest that clinics, surrogates and IPs will require guidance as to the definition of '*modest and reasonable*'.
- 40.3.** We would like to raise the concern that there are considerable challenges in reaching a suitably clear definition. Any resulting opacity could lead to inconsistency and bureaucracy.
- 40.4.** Additionally, we are concerned that clear and proportionate consequences would need to be articulated to respond appropriately when gifts are found to be immodest or unreasonable. If the regulator is required to adjudicate and respond to cases of alleged immodest or unreasonable gifts, it would require that appropriate powers and clear sanctions are developed and set out in the legislation.

41. Consultation question 82

Consultation question 82

19.107 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.

19.108 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.

19.109 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.

- 41.1.** The HFEA does not wish to comment on the question of whether it should be possible for the intended parent to agree to pay a woman for the service of undertaking a surrogacy and if so, what this sum should be.
- 41.2.** We would like to comment from a practical perspective only on 19.108 (2) which asks if a fixed fee should be set by the regulator. Setting a fixed fee for the payment of surrogates would be a significant undertaking for us, should the task fall to us, far beyond our existing remit and expertise. We would need to conduct consultations and regular reviews to determine the appropriate levels. This would have immediate and ongoing resource implications.
- 41.3.** Also, consideration needs to be given to what action could be taken by the regulator if surrogacy organisations or clinics are found to be overpaying surrogates. It would be vital for the regulator to have appropriate powers to sanction where the payment scheme is not being adhered to and for this to be possible, clearly defined payment limits would need to be in place.
- 41.4.** The HFEA does not wish to express a view on 19.109, however, we do consider that if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, the new legislation would need to make clear how this would operate in practice, including clarity on the point at which the fee has to be agreed and paid by the intended parents and a clear description of which other payments, if any, are permitted. This should give instruction on what should happen if unforeseen costs are incurred.

42. Consultation question 83

Consultation question 83

19.110 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.

19.111 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).

Paragraph 15.72

- 42.1.** The HFEA does not wish to express a view on what payment should be possible, if any, in relation to question 83 19.110 and 19.111. From our regulatory perspective, however, we would wish to emphasise the importance of ensuring that the regulator responsible for implementing and ensuring compliance with any scheme which comes into effect must have the right powers to investigate, regulate and sanction in cases where the system is being abused.

43. Consultation question 84

Consultation question 84

19.112 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?

Paragraph 15.74

- 43.1.** In principle, the HFEA agrees with the view provisionally expressed by the Law Commissions at 15.8, that reforms to the payments that can be made to a surrogate should apply equally to cases under the new pathway to parenthood and to those which remain under the pathway of applying for a parental order. We agree in principle that if uncertainty under the current law is such that reform is needed, then it would be desirable for this reform to apply to both of the categories of surrogacy mentioned.

44. Consultation question 86

Consultation question 86

19.114 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.

Paragraph 15.76

- 44.1.** As outlined in other questions, we do not wish to give a definite view as to which categories of compensation to surrogates should be permitted or not permitted, beyond to agree that '*essential costs relating to the pregnancy*' should be paid.
- 44.2.** However, we would like to make a few wider points about the new payment framework that the Law Commissions propose.
- 44.3.** Firstly, we are concerned that any future framework for the compensation of surrogates should be as clear as possible, to avoid this being confusing for users of the system (including intended parents, surrogates and clinics, surrogacy organisations and others to whom the system is relevant) and because grey areas can lead to abuse of the provisions. We think it could be difficult to determine what each category should include and even if categories are clearly defined that there is scope for compensation to be wrongly classified, inadvertently or otherwise. We think that if the payment framework is not clear enough this may also be likely to lead to disputes and litigation.
- 44.4.** If the HFEA is to be the body responsible for 'policing' payments, as proposed, we need to have appropriate powers to investigate and sanction clinics or agencies involved where there are concerns that any payments fall outside what is permitted. Our experience with the fertility sector suggests that it would be prudent not to simply replicate the existing arrangements.
- 44.5.** The Law Commissions' paper has said the payment model is one in which categories of payment are, or are not, permitted, as opposed to a payment system based on whether surrogacy is

'altruistic' and/or 'commercial'. While we understand the rationale behind this, we question whether this could be confusing for those using the payment system. We consider that where the Law Commissions do define what makes a surrogacy arrangement altruistic or not and refer to 'shared intention' being a hallmark of an altruistic arrangement that this may not be a widely understood definition of what differentiates something being 'altruistic' or 'commercial'.

- 44.6.** We believe that the kinds of financial transactions which take place are likely to be a relevant factor in whether intended parents and surrogates feel that the surrogacy process is altruistic or commercial. As the reasons for becoming a surrogate are likely to be personal and may often rest at least in part on the idea of being able to do something which is so significant for another individual or couple, we think it is worth carefully considering how any payment framework would be received and perceived by those using it.
- 44.7.** Aside from how well the proposed payment framework might be understood and received by surrogates and intended parents, the principle of altruism would usefully underpin surrogacy arrangements just as it does gamete donation. Questions 76- 80 seem to imply that the Law Commissions propose that compensation in surrogacy cases is being viewed as something akin to tort claims, where payments seek to put the individual in the position that they would have been in, had they not suffered the particular harm. We can understand the benefits of such a system but from a regulatory perspective we believe that if the regulator is tasked with overseeing compensation and the payment model is open to interpretation, then having an underlying principle to guide the regulator would be very useful.

45. Consultation question 87

Consultation question 87

19.115 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.

Paragraph 15.89

- 45.1.** The HFEA understands the point raised at 15.77, that the current law does not provide effective means to enforce the limitation on payments to reasonable expenses, given that in the vast majority of cases the paramount consideration of the welfare of the child will point to the award of a parental order, regardless of whether payments made to the surrogate are in excess of expenses.
- 45.2.** We support more effective means of ensuring compliance with limitations on payments that are permitted and in principle we would welcome these being incorporated into the Law Commissions' proposed new pathway to parenthood.
- 45.3.** From a practical perspective, how compliance with limitations on payments could be ensured both within and outside of the Law Commissions' new pathway would require careful consideration. We note the proposition at 15.85 that under the new pathway, payments that are to be made to the surrogate would be overseen by the regulated surrogacy organisation or clinic.

- 45.4.** We also note at 15.86 the proposal that the regulator of the surrogacy organisations and fertility clinics (proposed to be the HFEA) would be responsible for imposing regulatory sanctions should the clinics and surrogacy organisations fail to operate properly.
- 45.5.** The HFEA would need clarity on what regulatory sanctions could be applied to surrogacy organisations should they not operate properly, for example if they do not prevent prohibited payments to a surrogate. We consider that the responsibility for ensuring that surrogacy organisations correctly manage the process of payments to surrogates to be beyond our current remit and expertise. We would need to consider more detailed proposals on this wider area before we could express a definite view on its feasibility.
- 45.6.** Likewise, if independent surrogacy arrangements were brought within the new pathway, the feasibility of the regulator overseeing the conduct of 'independent professionals' with regard to returns made (as mentioned at 15.87 of the paper) would need to be carefully investigated.
- 45.7.** In cases where a parental order is made after the birth of the baby, the HFEA agrees with the position outlined at 15.83 that there are no specific measures that should be introduced to assist in the enforcement of limitations on permitted payments where a parental order application is made after the birth of the child, for the reasons given at 15.81 and 15.82.

46. HFEA contact details

- 46.1.** For further discussion of this submission, please contact the Head of Regulatory Policy, via Policy@hfea.gov.uk

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-29 11:16:57

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?

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:

No

Please provide your views below:

Surrogacy is not necessary and morally wrong.

Please provide your views below:

Surrogacy is not necessary and morally wrong.

9 Consultation Question 2:

Please provide your views below:

Surrogacy is not necessary and morally wrong.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Other

Please provide your views below:

Surrogacy is not necessary and morally wrong.

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:

Surrogacy is not necessary and morally wrong.

13 Consultation Question 6:

Please provide your views below:

Payments should not be made as we are dealing with human beings, not 'chattels'!

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Other

Please provide your views below:

Surrogacy is not necessary and morally wrong.

15 Consultation Question 8:

Other

Please provide your views below:

Surrogacy is not necessary and morally wrong.

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:

Surrogacy is not necessary and morally wrong.

Gametes should not be produced for the purpose of surrogacy or for any other purpose including research.

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:

Surrogacy is not necessary and morally wrong.

Sperm should not be produced for the purpose of surrogacy or for any other purpose including research.

18 Consultation Question 11:

Yes

Please provide your views below:

The 'defined period' should be a maximum of a month. The reason for this is it can take time for the mother to realise what she has done.

19 Consultation Question 12:

Other

Please provide your views below:

I agree with (1). With regard to (2), that should only apply if the parent is the actual father.

20 Consultation Question 13:

Not Answered

Please provide your views below:

21 Consultation Question 14:

No

Please provide your views below:

Every child should be assessed that all the arrangements for their care are in place.

22 Consultation Question 15:

No

Please provide your views below:

As the surrogate mother wants to 'keep' her child, it is in the best interests of the child that they have a 'father' figure in the family unit who lives with mother and child.

Other

Please share your views below:

Yes, providing the partner is a male.

23 Consultation Question 16:

No

Please provide your views below:

The 'surrogate' mother should register the child as hers and whoever provided the sperm for fertilisation.

Other

Please provide your views below:

See above.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

See above

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

That seems fair enough so that the child has stability in their life.

26 Consultation Question 19:

No

Please provide your views below:

See earlier response.

Please provide your views below:

The child's parents are his/her mother and the male who provided the sperm and thus they should be registered as parents. As regards to who becomes 'responsible' for the child, then the Courts need to decide who is the most suitable, ideally the male partner of the surrogate mother.

27 Consultation Question 20:

Other

Please provide your views below:

There should be some flexibility to make sure that the child's best interests are served. Ideally, there should be a male and a female couple.

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:

Three parent model is a very confusing concept for children.

29 Consultation Question 22:

Please provide your views below:

Surrogacy should be banned - instead adoption should be better promoted.

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:

Other

Please provide your views below:

See above comments.

34 Consultation Question 27:

Other

Please provide your views below:

See comments above.

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:

As above.

36 Consultation Question 29:

Please provide your views below:

See above comments.

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:

Surrogacy is basically adultery and thus is sending the wrong message about relationships. I appreciate that where the female is unable to have children is heart breaking, we should not go down the road of surrogacy. Instead, parents should be adopting children. I am sure if all those who wish to go down the path of surrogacy, adopted instead, most children who are 'orphaned' for whatever reason would be cared for in a loving family.

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:

See previous comments.

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

None

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

- 1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

- 1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

- 1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-YJEA-E

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-08-29 22:22:17

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

n/a

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

-

Chapter 6: The parental order procedure

8 Consultation Question 1:

Other

Please provide your views below:

I support the proposed idea that there be a list of 'approved' countries whose surrogacy laws would meet an approved standard. My child was born by surrogacy in the USA with a very clear-cut legal procedure, but the UK not recognising our contract with the surrogate, as well as the order in the US in which she and her husband had waived their legal responsibilities pre-birth meant that we were left in technical legal limbo. I do appreciate that there may be surrogacy cases in other countries that are less clear-cut and so require the judgement of the High Court.

Please provide your views below:

See view in q8.1(1).

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:

No

Please provide your views below:

I think the legal parentage should be awarded pre-birth, as in California, USA, at or around the 24th week of gestation (to be in line with abortion law cut off).

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?

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:

Anonymously donated sperm should not prevent the surrogacy from entering into the new pathway.

18 Consultation Question 11:

No

Please provide your views below:

I don't agree that the surrogate should have a right to object. The agreement is that the baby is not hers and that it is the child of the IPs; I think giving this right to object is unfair treatment of the IPs. Once an adoption order has been granted, it is final (<http://childprotectionresource.online/i-want-to-appeal-against-the-adoption-order/>) so I see no reason why this should be different.

Regarding 18.11(2), I think the objection should only be sent to the regulatory body, who should then make contact with the IPs in a time-frame laid out in the objection procedure.

19 Consultation Question 12:

No

Please provide your views below:

I think this is entirely the wrong way round and is heavily balanced in favour of the surrogate. I think if the surrogate objects, both IPs should retain legal parentage until the court has decided who the parents will be. I think the new pathway should be better integrated with the parental order process so that an application isn't required, and the pathway can be routed to the court for a judgement in the event of the surrogate objecting (although I do acknowledge that I have no legal knowledge here and this may not be possible; it just seems like excessive paperwork). I think if it's a 'right to object', that implies that a judgement is made by a third party (ie. a judge) before something happens; it seems grossly unfair to me that the parentage is removed at the point of objection, and is then effectively re-awarded if the objection fails. As stated, I do disagree with the surrogate's right to object in principle. Once an adoption order has been made, the birth parents cannot contest (<http://childprotectionresource.online/i-want-to-appeal-against-the-adoption-order/>), so I think this proposal is inconsistent and wrong on this issue. As a parent who has a child by surrogate, I would go to California again for the legal certainty, as I do not believe the reforms give the IPs that security.

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:

This situation is traumatic for all involved and all parties have lost a child, so the law should treat all parties as if the child had been born alive and healthy.

Yes

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

I disagree with this. I think if the surrogate dies in labour, the IPs should still be the legal parents from birth. I think the proposal for this circumstance is grossly insensitive - I would imagine the sense of guilt for the IPs would be utterly immense, so to then say that actually, the child born is not legally theirs and that they then have to apply for a parental order is ridiculous. I see that it is trying to respect the surrogate's right to object, but as stated I don't think she should have this right in the first place.

26 Consultation Question 19:

Yes

Please provide your views below:

Yes, I think the intended parents should be recognised in the child's documentation of birth should they both die.

Please provide your views below:

I think the pathway should nominate a guardian of the child for this event as part of the process, to whom the child would then go, and the guardian then apply for a parental order.

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:

No

Please provide your views below:

If possible I don't think the IPs should have to apply for a parental order - I think when the surrogate exercises her right to object, this should then trigger a parental order from a judge, with the application being all that was done as part of the new pathway. As stated, I don't think the surrogate should have a right to object.

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:

Parental responsibility should be that of the IPs at birth or before.

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:

My partner and I (both male, cohabiting) have a daughter born by surrogacy to a surrogate who lived in CA, USA. We are currently going through the process again to have a second child the same way. We have been matched with both our surrogates by West Coast Surrogacy agency. As part of their framework for surrogacy, all health checks were done by California Fertility Partners (we've used the same doctor for both journeys), and have used [REDACTED] as counsellor (Licensed Marriage and Family Therapist) to support the surrogate throughout, and assess before the journey. The three of us have agreements signed with [REDACTED] to say that she can disclose to us what is said in the meetings as needed, so that if we are not supporting the surrogate enough, that can be communicated to us by this route. The surrogate sees [REDACTED] at least monthly throughout the pregnancy, which is something that I feel is very important - I think professional mental health support is important during the journey, irrespective of whether it is an international journey or not (assuming that the IPs might not be able to be as present for an international case). Legal advice sought in the US from International Fertility Law Group, and in the UK from Dawson Cornwell. Surrogate's legal advice sought from her own lawyer, which she has to have as part of the process.

Having seen all the support given to us and the surrogate by these various parties, I would say that independent surrogacy is unwise, and that the guidance and support of independent bodies to each journey is vital to its success.

39 Consultation Question 32:

Please provide your views below:

No - the lack of regulation in the current system is one of the biggest problems, so to do surrogacy without the support of regulated bodies seems unwise.

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:

I don't think this person should have to be legally qualified.

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:

One of the various reasons that we went to the US was time - we felt that the current UK charities were unable to help us within the timescale in which we wanted to have a child. I think the important thing is that the new regulated organisations can facilitate surrogacy within a reasonable timescale by being properly resourced - my query here would be whether they can properly staff the teams on a non-profit basis, or whether they would need to make more money in order to make it work in reality.

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:

An overseeing of the surrogacy journey from initial approach of the surro and IP to the organisation, right through to birth, engaging with all parties involved in the process so that there is a third party to the journey to oversee with objectivity between surro/IPs and to offer experience of previous surrogacies.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Yes

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

I would have no objections to this.

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:

No response as no knowledge of law

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

No

Please provide your views below:

I entirely disagree with this. I think the surrogacy agreement should be a legal contract. I am aware that anecdotally these aren't enforced in the US with regards to clauses around clean eating/vitamins etc (some of the arguably more trivial stipulations), but I think the agreement is trivial unless it is an actual contract.

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 have found this service to be imperative to our two surrogacy journeys.

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:

I think this would be in line with advertising for adoption.

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:

Yes, but I think it should be at the surrogate's discretion as to whether her name is recorded on 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:

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:

Yes, I think this is a fair request of the person born of surrogacy.

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

Yes

60 Consultation Question 52:

Please provide your views below:

Please provide your views below:

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

Yes.

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

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:

Not Answered

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

I think the welfare of the child should be considered paramount here, and the law should mirror how the same case would treat IPs going through adoption.

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:

In our case, I think counselling was far more important for the surrogate than for us as IPs. We knew exactly what we were doing and had thoroughly and comprehensively understood the process. I think there was no more need for us to have counselling than for a healthy heterosexual couple having a baby with no help for conception.

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Yes

Please provide your views below:

77 Consultation Question 69:

Yes

Please provide your views below:

Please provide your views below:

Yes, very much so.

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 - I think she needs to have experienced birth to know whether she could give someone else the child she delivered, even if it's not genetically hers. If the reforms allow the surrogate to be paid, then I think this definitely should be required to prevent women becoming a surrogate solely to raise money and with no altruistic aim. I think it would be naive to think that our surrogates in California have done it absolutely exclusively for altruistic reasons (although this is the line the agency pedal), but I think this is a major drive for them.

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:

Yes, I think IPs should be able to pay the surrogate for essential costs. I would include (but not limit to) clothing, house cleaning in the third trimester, childcare as required for the surrogate's child if applicable (possibly only in third trimester), expenses relating to hospital visits (mileage, parking), reimbursement for lost wages during the pregnancy.

82 Consultation Question 74:

Please provide your views below:

Yes, I think IPs should be able to pay the surrogate for additional costs. I would include (but not limit to) a welfare allowance for spending as the surrogate wishes to help relax and cope with the pregnancy (eg. a massage, something relaxing). I think to pay for a holiday after the surrogacy for the surrogate would be excessive.

83 Consultation Question 75:

Please provide your views below:

I think it fair that the surrogate should cover her own legal costs arising from the surrogacy, not least so that her own legal proceedings are independent from the IPs.

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, I think the IPs should be able to pay their surrogate her actual lost earnings.

85 Consultation Question 77:

Please provide your views below:

Yes

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:

I think the sums to be paid for all of these should be agreed in contract before proceeding with the surrogacy.

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:

I think the fees should be set by either the regulator or the approved agencies. I don't think it should be up to the parties to negotiate.

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, but the amount should be agreed before the surrogacy takes place

89 Consultation Question 81:

Please provide your views below:

Yes, they should be able to. I think in reality, it would be very difficult to control and police the modesty of the 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:

We have paid a surrogate in California to undertake a surrogacy for us, and are planning to do so again for a second child. I think the payment helps to reinforce the reality of the situation, which is that she is doing the job of growing a child for us due to our infertility. I can see why others would be uncomfortable with this, but I think that is a personal issue and we have no objection to it.

any sum agreed between the parties to the surrogacy; or

Please provide your views below:

essential costs relating to the pregnancy;; additional costs relating to the pregnancy;; lost earnings;; compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or, gifts.

Please provide any views below:

I think all these categories are legitimate expenses and costs.

91 Consultation Question 83:

Please provide views below:

I think the UK should look to the US here. Before embryo transfer is made, we pay the surrogate costs into a private trust fund. We have then paid up front without paying the surrogate the money so she can't run off with it, but she also has the security of knowing the money is there. The agency then pay her expenses and her fee monthly through the pregnancy. In the event of a miscarriage or termination, she is not required to repay money, but isn't

paid any more, which I think is fairest to both parties.

to any miscarriage or termination; or

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Yes

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Yes

Please provide your views below:

No

Please provide your views below:

I think terms such as no smoking/drinking/non-medical drugs should be linked here.

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:

Our child was born in California, USA. We obtained her birth certificate and then US passport within 3 and a half weeks, and came home when she was 4 weeks old, with her travelling in on a US passport. We came into London Heathrow as had been advised that other airports would never have seen our case before, so LHR would be the best place for understanding the case (we live in [REDACTED] so MCR would have been closer to home). The passport official at LHR was helpful and we were only at the desk for no more than 5 minutes, but that was only thanks to her colleague nearby guiding her through. The infamous line she said once she'd decided how to treat our case was "ok, I'll go and get a Form A", to which her colleague said "No no, you put it through as the other Form A", so although we got in, the process didn't exactly seem clear cut.

We had instructed UK lawyers before the birth, so as soon as our child was born, our paperwork was prepared and an application for a parental order was lodged with the courts. Our parental order was granted at first hearing, four days before her first birthday, so it took just under a year. When it became apparent that it was going to take significantly longer than we thought, we engaged a UK immigration lawyer to apply for her citizenship, as we needed to travel to Spain and Andorra, rather than wait to do this as part of the parental order process, as had been the original plan. This application was quick and we had her citizenship and passport within about six weeks from the start of application (which we did when she was about 7 months).

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:

This would potentially make the process of returning 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:

Our daughter's visa was granted at the border when we landed at LHR. Her departure date was written as 'NA'.

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?

Other

Please provide your views below:

Yes, subject to 107. Consultation Qu 99 also being yes. There are countries, eg USA, where the surrogacy procedures and standard of healthcare are parity or better with the UK. After our child was born in the US, where we were unarguably her legal parents, it was not right that the UK then ignored this legal status and made us apply for a parental order.

107 Consultation Question 99:

Yes

Please provide your views below:

I think these clauses are of vital importance - surrogacy is not the same around the world and it would be grossly unfair to treat surrogacy from all countries the same.

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Other

Please provide your views below:

Yes, but I think there needs to be a less gendered view here. We're two dads, and I took a year off, but was unable to claim any parental leave allowance, maternal or paternal. I am self employed, but was unable to claim maternity allowance for the self employed.

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

We live in [REDACTED]. Our doctors surgery were very sweet when we came back to the UK with our daughter - they were open in saying they'd not met a family like ours before so they would need a little bit of time to get their system working for us, but would sort it out.

We were able to obtain an NHS number for her asap, which was the main thing. If this could have been done from abroad, that would have really helped.

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:
2017

international

If international, in which country did the arrangement take place?:

USA (California)

Yes

(b) male same-sex couple;

118 Consultation Question 110:

international

Yes

Yes

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:

When [REDACTED] granted our parental order at the first hearing, the sense of relief was so immense. He described any report that Cafcass could produce to be the proverbial rummaging through of our sock drawer, and this neatly summed up an intrusive and unnecessary process. Our surrogate and her husband gave up any legal right to our daughter before her birth in the US county court, and yet the UK law still saw them as the legal parents - it was draining emotionally and financially, and was unnecessary.

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:

We are grossly disappointed by the proposals. If the reform is to the current proposal, we would still go to the USA in order to have full legal security that the surrogate could not challenge our legal parentage to our own child. We feel that the proposed reforms have not fairly balanced the rights of both sides of the surrogacy agreement.

Please provide your views below:

124 Consultation Question 116:

international

Please provide your views below:

Approximately £150,000

Please provide your views below:

Approx £50k family gifts, the rest hard work!

Please provide your views below:

£0 - we were lucky and conceived on the first IVF round

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

*Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.*

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- ☐ This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- ☐ Surrogate
- ☐ Intended parent
- ☐ Person born of a surrogacy arrangement
- ☐ Family member of a surrogate
- ☐ Family member of an intended parent
- ☐ Legal practitioner
- ☐ Medical practitioner or counsellor
- ☐ Social worker
- ☐ Academic
- ☐ Other individual

5. What is your email address?

Email address:

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[Enter your phone number here.]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1. 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. 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. 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. 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. 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. 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. In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:
 - (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
 - (2) complied with procedural safeguards for the agreement, and
 - (3) met eligibility requirements,on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 8.

1. 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.

2. 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. 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. 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. 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. We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 13.

1. 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. We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:
 - (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
 - (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
 - (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 15.

1. 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.

2. 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. 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.

2. 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. 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. 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. 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.

2. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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.

2. 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. 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. 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.

2. 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.

3. 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. 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. 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. 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.

2. 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. 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. 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.

2. 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. 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. 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. 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. 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. 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. 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. 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. 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

2. 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. 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. 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

2. 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. 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. 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

2. 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. 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. 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. 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. 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. 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.

2. 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. 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. 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. 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.'

2. 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.

3. 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. 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. 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. 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.'

2. 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. 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.

2. 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).

3. 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. 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.

2. 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.

3. 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. 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?

2. 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. 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'.

2. 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. 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. 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. 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'.

2. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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.

2. 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.

3. 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. 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. 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. 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'.

2. 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'.

3. 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. 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.

2. 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. 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. 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. 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. 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. 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'.

2. 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. We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1. 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. 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. 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. 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. 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>

2. 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

3. 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

4. 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. 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. 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. 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. 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. We provisionally propose that:
2. 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
3. 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. We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

2. 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. 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. 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. 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. 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. 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. 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. 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.

2. 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.

3. 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. 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. 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. 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. 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. 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

2. 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. 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. 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. 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

2. 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. 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. We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1. We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- ☐ Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- ☐ Advance equality of opportunity between people who share a protected characteristic and those who do not.
- ☐ Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws

around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-09-01 16:41:46

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:

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 mother of a child is their mother. This needs to be the starting position, not the paying 'parents'. My understanding is that there has been a special rapporteur to the UN on this, and they found that the mother should retain her rights as mother as the starting point.

As the mother of children, and as a woman, I find the idea of giving birth without the legal recognition that that is my child utterly terrifying. This is a huge infringement of women and children's rights, and I don't understand how that question isn't front and foremost in this consultation. This would be a very wrong step.

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:

Please see my answer above.

It's morally unacceptable to infringe women's rights in this way.

19 Consultation Question 12:

Not Answered

Please provide your views below:

20 Consultation Question 13:

Other

Please provide your views below:

This question hints at one of the many things hidden away in the technicalities of this opaque consultation that requires a wider public debate.

Which sort of person becomes a surrogate? How many women in the top three income deciles do so, I wonder? How will this ridiculous self certification help women who are poor, who are coercively controlled?

Where is the self certification for the child ripped away from its mother? Why are we as a society not interested or debating the rights of these children in this consultation?

I think, at least I hope, that we will regard removing new born babies from their mothers as utterly barbaric in the future. We don't take kittens and puppies as new borns as we recognise the devastating impact on mother and baby. It's called the fourth trimester for a reason. I find myself horrified that I'm going to try to explain that there are physical and psychological bonds formed in utero that should not be broken by the taking of babies from their mothers. That it happens is not reason to support it in law. Men abuse women. People murder each other. We do not need to entrench those realities with supporting legislation.

21 Consultation Question 14:

No

Please provide your views below:

As for all the reasons above, you need to step back and consult about surrogacy and the selling of babies in a broader way, actually focused on the rights of the child.

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:

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?

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:

Another brilliant example of a question which obliquely raises the real issues around surrogacy which this consultation completely fails to raise.

Why are we not examining whether it is OK to sell women's bodies? Why is it not legal to sell a kidney but acceptable for women to be sold for this? Women's rights need to be included in this consultation, because as this question references, some women will die doing this.

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:

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)

- Surrogate
- Intended parent
- Person born of a surrogacy arrangement
- Family member of a surrogate
- Family member of an intended parent
- Legal practitioner
- Medical practitioner or counsellor
- Social worker
- Academic
- Other individual X

5. What is your email address?

Email address:

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration.

Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,

- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in

surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or

parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

- 1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

- 1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

- 1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-YJ7Z-S

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-09-02 21:25:44

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Not Answered

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

I had no concerns regarding our parental orders being 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:

When a child is living with you it can be difficult if you haven't got PR, especially with health professionals. For example we had to get our surrogate to sign consent for the heel prick test.

We also wanted to go away but couldn't get a passport until the PO was granted, this took over 12 months.

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 report is about you so we should see it. The court released our report at the second hearing and there were significant errors in it, including who was biologically related.

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

This will make the process more straightforward and reduce problems once the child is born.

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:

The surrogate should have the opportunity to object.

19 Consultation Question 12:

Yes

Please provide your views below:

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

Yes

Please provide your views below:

22 Consultation Question 15:

Yes

Please provide your views below:

No

Please share your views below:

23 Consultation Question 16:

Yes

Please provide your views below:

Yes

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

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?

Not Answered

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

No

Please provide your views below:

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;; 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

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?

No

Please provide your views below:

If it's not enforceable what's the point of it?

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:

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:

No

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:

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:

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?

Yes

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?

No

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, but without the need for production of receipts; or

Please provide your views below:

81 Consultation Question 73:

Please provide your views below:

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

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 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:

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:

to any miscarriage or termination; or

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

No

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:

No

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?

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 provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

2018

domestic; or

If international, in which country did the arrangement take place?:

Not Answered

(a) opposite-sex couple;

118 Consultation Question 110:

domestic; or

Yes

No

Please provide the cost of any legal advice or representation below:

Free however the court proceedings are ongoing

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

Emotionally its difficult as services need the birth certificate to register and you end up having to explain to people. When our baby started day care they wanted a copy of the birth certificate, why should I need to explain to everyone!

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Getting the order for a DNA test and getting the test done has been complicated and expensive. This has also delayed things.

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:

domestic; or

Please provide your views below:

£2000

Please provide your views below:

Savings

Please provide your views below:

£4000

Please provide your views below:

Savings and from family.

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?

Feminist Legal Clinic Inc.

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

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 - X
- Medical practitioner or counsellor
- Social worker
- Academic
- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:



7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

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.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

- 1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

- 1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

- 1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;

- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit.

There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-YJ7Z-S

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-09-02 21:25:44

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Not Answered

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

I had no concerns regarding our parental orders being 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:

When a child is living with you it can be difficult if you haven't got PR, especially with health professionals. For example we had to get our surrogate to sign consent for the heel prick test.

We also wanted to go away but couldn't get a passport until the PO was granted, this took over 12 months.

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 report is about you so we should see it. The court released our report at the second hearing and there were significant errors in it, including who was biologically related.

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

This will make the process more straightforward and reduce problems once the child is born.

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:

The surrogate should have the opportunity to object.

19 Consultation Question 12:

Yes

Please provide your views below:

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

Yes

Please provide your views below:

22 Consultation Question 15:

Yes

Please provide your views below:

No

Please share your views below:

23 Consultation Question 16:

Yes

Please provide your views below:

Yes

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

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?

Not Answered

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

No

Please provide your views below:

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;; 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

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?

No

Please provide your views below:

If it's not enforceable what's the point of it?

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:

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:

No

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:

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:

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?

Yes

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?

No

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, but without the need for production of receipts; or

Please provide your views below:

81 Consultation Question 73:

Please provide your views below:

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

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 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:

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:

to any miscarriage or termination; or

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

No

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:

No

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?

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 provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

2018

domestic; or

If international, in which country did the arrangement take place?:

Not Answered

(a) opposite-sex couple;

118 Consultation Question 110:

domestic; or

Yes

No

Please provide the cost of any legal advice or representation below:

Free however the court proceedings are ongoing

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

Emotionally its difficult as services need the birth certificate to register and you end up having to explain to people. When our baby started day care they wanted a copy of the birth certificate, why should I need to explain to everyone!

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Getting the order for a DNA test and getting the test done has been complicated and expensive. This has also delayed things.

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:

domestic; or

Please provide your views below:

£2000

Please provide your views below:

Savings

Please provide your views below:

£4000

Please provide your views below:

Savings and from family.

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response
-

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.

1.15 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 of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.117 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.118 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.119 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.120 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.121 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.122 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.123 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.124 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.125 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.126 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.127 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.128 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.129 We provisionally propose that:

1.130 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.131 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.132 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.133 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.134 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.135 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.136 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.137 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.138 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.139 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

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.

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-YJQM-6

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-09-03 17:43:20

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

No

Please provide your views below:

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:

During our surrogacy journey, it was incredibly stressful and hurtful to know that in the eyes of our government, we weren't the 'parents' of our daughter. I know it was also of concern to our surrogate, as she was the legal parent of our child, even though she helped us in starting a family, with the explicit understanding that my husband and I were taking on all parental responsibility from birth. I believe quite strongly that if the above steps are taken, then it is of great benefit to everyone involved if the issue of parentage is settled from birth.

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:

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:

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?

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:

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?

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:

We utilised the services of a surrogacy agency in the USA. As part of our process, my husband and I both had extensive health screenings, as well as a genetic screen, and a psychological evaluation.

The most involved and strenuous part of our journey was the legal process to become our daughter's legal parents in the UK. (We were considered her parents from birth in the USA). We retained the services of a legal firm here in the UK that specialises in these matters, and paid over £5,000 for their help in navigating the parentage application process. We were grateful for their help, as we found the process to be too convoluted for us to understand what was required of us, and felt the process was too 'high stakes' for us to risk trying to go through the process alone.

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?

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 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

63 Consultation Question 55:

Not Answered

Please provide your views below:

Yes

Please provide your views below:

Chapter 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:

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:

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:

The agency we worked with in the USA made it a requirement that our surrogate have had children of her own before serving as a surrogate, and we found this to be a smart and worthwhile requirement. It put our minds at ease that she understood the process that she was about to undergo, and gave us (and her) peace of mind that she understood the journey we were embarking on together.

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, 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:

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:

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:

My husband and I both found it fair and worthwhile that we were able to not only cover the essential costs of our surrogate's pregnancy, but to also compensate her for her lost time at work, and to pay her an overall fee for her service. What she did for us was incredible and life changing - the gratitude we feel for her and her help in bringing our daughter into the world is immeasurable. To us, it seems only fair that we compensated her and covered all of the related costs and lost wages that she experienced throughout the pregnancy.

any sum agreed between the parties to the surrogacy; or

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

to any miscarriage or termination; or

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

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:

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?

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?

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 provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:
2017

international

If international, in which country did the arrangement take place?:

USA

Yes

(b) male same-sex couple;

118 Consultation Question 110:

international

Yes

No

Please provide the cost of any legal advice or representation below:

£5,000

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

We found it frightening and deeply unnerving to know that we weren't considered the legal parents of our daughter in the eyes of the UK government. The unclear position we inhabited, as well as a lack of information on how we would be treated by midwives, our GP, and the other social programs

parents in the UK are entitled to was very, very stressful for us.

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

international

Please provide your views below:

~\$130,000

Please provide your views below:

Savings, inheritance, and the sale of our home.

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[Enter your name here.]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response
- This is a response on behalf of an organisation
- Other

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Surrogate
- Intended parent
- Person born of a surrogacy arrangement
- Family member of a surrogate
- Family member of an intended parent
- Legal practitioner
- Medical practitioner or counsellor
- Social worker
- Academic
- Other individual

5. What is your email address?

Email address:

[Enter your email address here.]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[Enter your phone number here.]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration.

Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,

- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in

surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or

parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

- 1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

- 1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

- 1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

- 1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

- 1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

- 1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-09-05 20:59:20

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?

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:

All International surrogacy arrangements should continue to be automatically allocated to a Judge of the High Court. There is a history of International surrogacy arrangements abuse and exploitation and a high level of scrutiny should be maintained.

Please provide your views below:

They should be so allocated

9 Consultation Question 2:

Please provide your views below:

All surrogacy cases should require a legal parental order post-birth and be dealt with at the current level of the judiciary, no lower court, 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:

The case of Thai multiple women surrogates for a wealthy Japanese businessman raised many questions (2012).
<https://www.straitstimes.com/asia/east-asia/japanese-behind-baby-factory-wants-more-surrogate-kids?source=post>

11 Consultation Question 4:

No

Please provide your views below:

The case of baby M (1986) demonstrates that this would not be a safe arrangement. The Commissioning Parents prevailed in a lower state court, but in 1988 the New Jersey Supreme Court reversed that decision. It invalidated the surrogacy contract as an affront to public policy, and called the intended payment "illegal, perhaps criminal, and potentially degrading to women."

A woman is not a container.

Nonetheless, the court gave custody to the Commissioning Parents, saying this was in the best interest of the child.

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, with the proviso that the birth mother has custody, should she wish and is legally aided to present her case, with the documents available.

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:

Everyone should have a birth certificate of birth BY a woman, not a birth FOR somebody/a couple.

It will make it more difficult for the child to research their identity.

The right of the surrogates to change her mind about the baby that she has born. It is the poor who are the surrogates and the rich who commission the surrogate. This is an unequal transaction, which results in consent that is frequently under informed if not uninformed, low payment, coercion, poor health care, and severe risks to the short- and long-term health of women who carry surrogate pregnancies.

The evidence which has been cited in the Consultation documents comes from mothers who have acquiesced to the arrangement and moved on. Ask a woman 'how was the birth? The day of the birth- she will describe the pain of labour. Ask her a year later and she will say it was OK.

15 Consultation Question 8:

Other

Please provide your views below:

The interests of the child will be best served by the current legal arrangement and a new document, which can also be lodged in the record of births to show the transfer of parenthood to the commissioning parents.

Another period

Please provide your views below:

None. Archive as above.

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 right of the child to discover their identity should be paramount to avoid the mental health issues around identity confusion in later life. The genetic origins in issues of identity also risks attraction to a closely related person.

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 arrangement should enter the new pathway. This proposal seems to be based on the commercial interests of surrogacy agencies.

18 Consultation Question 11:

Other

Please provide your views below:

A post-natal mother is in a very vulnerable condition and should be given a reasonable amount of time to decide to keep her baby. She should be given all possible support, including automatic legal aid.

19 Consultation Question 12:

Yes

Please provide your views below:

Naturally

20 Consultation Question 13:

No

Please provide your views below:

'Reason to believe' is insufficient. There must be a professional assessment of whether the surrogate lacks capacity.

21 Consultation Question 14:

Not Answered

Please provide your views below:

22 Consultation Question 15:

Yes

Please provide your views below:

This should never have been the case in the first place.

This only adds to identity confusion and is against the interest of the child.

No

Please share your views below:

This should never have been the case in the first place.

This only adds to identity confusion and is against the interest of the child.

23 Consultation Question 16:

No

Please provide your views below:

This proposal shows a deep misunderstanding of the bereavement that the mother will suffer having a stillbirth baby. The commissioning parents may be disappointed, but this is nothing compared to the emotional upset of the birth mother.

No

Please provide your views below:

This proposal shows a deep misunderstanding of the bereavement that the mother will suffer having a stillbirth baby. The commissioning parents may be disappointed, but this is nothing compared to the emotional upset of the birth mother.

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:

Agree

26 Consultation Question 19:

No

Please provide your views below:

So the intention is that a child will discover that she has been given away by her birth mother to dead people. What kind of proposal is this? The interests of the child should be paramount or at the very least considered. We are talking about a human being, not a business asset!!!

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

This option should be seriously explored.

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:

The right of the surrogate to change her mind should be protected in law.

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?

Yes

Please provide your views below:

No baby should be taken from their mother's arms without her informed and explicit consent.

36 Consultation Question 29:

Please provide your views below:

No. Shared responsibility is the most humane arrangement for all parties.

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:

The New Pathway is flawed

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:

It is most unlikely that independent surrogates will be well represented.
There is anecdotal evidence that prostituted women are being offered as surrogates

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

Must be heavily regulated or we should outlaw surrogacy as has happened in other countries

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?

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:

The surrogate should be regarded as the birth mother not just a vessel for those who have bought her services. Therefore the right to keep her baby should be protected

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Not Answered

Please provide your views below:

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

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:

They should have as much personal identifying material as possible

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:

However, I am opposed to a birth certificate which does not record the woman who gave birth to the baby

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:

All this information should be available to a child born as the result of these arrangements

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:

There is a need to explore why a woman who has fully consented to be a surrogate would wish to be anonymised in an authority register.

57 Consultation Question 49:

No

Please provide your views below:

This should be provided earlier than 18 years old.
I suggest earlier. 16 years old.

Please provide your views below:

Yes.

Without consent of legal parents

Maturity is a slippery concept and it should be decided by the child

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

Yes.

The reaction to this news would be critical.

59 Consultation Question 51:

Yes

Please provide your views below:

The recent case of an only child who has found 11 siblings because they have the same sperm donor shows that there can be joy in discovering siblings

Please provide your views below:

Yes. They should

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. This will not make any sense to a child seeking her identity and identity landscape

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Surrogacy Consultation Questions

*Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.*

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

none

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response **x**
- This is a response on behalf of an organisation
- Other

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Surrogate
- Intended parent
- Person born of a surrogacy arrangement
- Family member of a surrogate
- Family member of an intended parent
- Legal practitioner
- Medical practitioner or counsellor
- Social worker
- Academic
- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number? 

Telephone number:

[Enter your phone number here.]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1. 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. 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. 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. 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. 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. 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. 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. 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.

2. 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. 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. 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. 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. We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 13.

1. 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. We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:
 - (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
 - (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
 - (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 15.

1. 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.

2. 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. 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.

2. 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. Its important for the health of the mother and any future children that the cause of the stillbirth is investigated and detailed in her maternity record and details shared for epidemiological purposes .

Paragraph 8.77

Consultation Question 17.

1. 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. 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. 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.

2. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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.

2. 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. 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. 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.

2. 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.

3. 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. 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. 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. 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.

2. 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. 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. 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.

2. 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. 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. 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. 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. 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. 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. 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. 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. 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

2. 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.

With the increase in knowledge of the genetic basis of disease and the development of genetic treatments and disease modification, children born through surrogacy need access to their genetic inheritance -especially in the case of rare diseases.

Paragraph 10.102

Consultation Question 48.

1. 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. 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

2. 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. 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. 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

2. 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. 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. 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. 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. 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. 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.

2. 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. 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. 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. 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' except where a woman does not have a womb.

2. 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.

3. 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. 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' except where a woman does not have a womb.

Paragraph 12.71

Consultation Question 61.

1. 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' except where a woman does not have a womb.

Paragraph 12.76

Consultation Question 62.

1. 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.'

2. 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' except where a woman does not have a womb.

Paragraph 12.94

Consultation Question 63.

1. 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.

2. 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).

3. 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. 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.

2. 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.

3. 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. 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?

2. 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. There is a risk of economic necessity driving some young girls, students and women to surrogacy -as happens now with prostitution and other aspects of the sex trade.

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. 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'.

2. 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. 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. 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. 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'.

2. 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. 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. Additionally, pregnancy and childbirth are not without risk to both physical and mental health -especially a first pregnancy.

Paragraph 13.95

Consultation Question 71.

1. 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. 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. 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. 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. 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. 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. 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. 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. 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, leading to impaired wound healing, pain on intercourse, incontinence, and later prolapse. Would long term as well as immediate adverse events be compensated? If so, for how long? And how would post natal depression or peri-natal psychosis be compensated?

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 with implications for future pregnancies. 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 pre-eclampsia and 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) or impact a future pregnancy eg an adherent placenta with risk of bleeding.

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 considered .

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.

2. 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.

3. 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. 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. 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. We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

2. We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

3. 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. 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.

2. 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. 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. 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. 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. 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. 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'.

2. 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. We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1. 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. 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. 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. 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. 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>

2. 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

3. 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

4. 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. 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. 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. 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. 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. We provisionally propose that:
2. 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
3. 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. We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

2. 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. 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. 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. 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. 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. 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. 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. 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 and sex selection. 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. The implications of multiple pregnancies -twins and triplets increase the risk to mother and babies and significantly increase NHS costs eg when instrumental deliveries, CS, and neonatal intensive care are needed- as well as reducing the woman's ability to care for her own children or to work.

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 with caring for the elderly and those with dementia, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge

their parenting fantasies while denying patients access to drugs which are standard of care in other countries.

2. 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.

3. 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. 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. 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. 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. 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. 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

2. 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. 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. 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. 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

2. 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. 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. We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

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

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* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-09-07 12:19:36

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

OBJECT women not sex objects

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:

objectuk@yahoo.com

6 What is your telephone number?

Telephone number:

07739371848

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:

OBJECT's view is that international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court;

Object notes that proposed reforms, if implemented, are said to be going to make domestic surrogacy arrangements more attractive. The Swedish enquiry (1976), which led to the banning of surrogacy in Sweden could establish no proof that legalising "altruistic" surrogacy would do away with the commercial industry. International experience shows the opposite – citizens of countries such as the US or Britain, where the practice of surrogacy is widespread, tend to dominate among foreign buyers.

The case of Thai multiple women surrogates for a wealthy Japanese businessman raised many questions (2012).

<https://www.straitstimes.com/asia/east-asia/japanese-behind-baby-factory-wants-more-surrogate-kids?source=post>

A high level of scrutiny is required.

Object propose that the surrogacy business should be banned not made easier.

If surrogacy is not banned, our view is that international surrogacy arrangements should continue to automatically be allocated to a judge of the High Court, without exceptions. This is because of abuses which are particularly likely to occur in the context of some international surrogacy arrangements. Depending on the law and the effectiveness of law enforcement in the countries concerned, international surrogacy arrangements may be more likely overall than domestic surrogacy arrangements to involve the sale and trafficking of children, and also the coercion of women who may be vulnerable due to extreme poverty and other forms of social marginalisation. In order to safeguard the rights and interests of both children and birth mothers, international surrogacy arrangements should be subject to the scrutiny of experienced senior judges sitting in the High Court

Please provide your views below:

For the reasons given above, our view is that international surrogacy arrangements should always be allocated to the High Court. In the event that this does not happen, our view is that those cases which are not allocated to the High Court should be allocated to specialist ticketed circuit judges in order to ensure that judges have the necessary experience and expertise to properly scrutinise the arrangements and safeguard against potential abuses.

9 Consultation Question 2:

Please provide your views below:

Object considers that the highest level of safeguarding and scrutiny is essential considering the history of the abuses of surrogacy arrangements.

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:

Object points to the lack of any mention in the consultation document of surrogacy arrangements, which have been open to abuse and exploitation, as the case of baby M (1986) demonstrates. The Commissioning Parents prevailed in a lower state court, but in 1988 the New Jersey Supreme Court reversed that decision. It invalidated the surrogacy contract as an affront to public policy, and called the intended payment "illegal, perhaps criminal, and potentially degrading to women." Nonetheless, the court gave custody to the Sterns, saying this was in the best interest of the child.

If we are not allowed to buy and sell people in slavery – it should not be possible to rent an organ, a womb, which interacts with every cell of the surrogate's body.

11 Consultation Question 4:

No

Please provide your views below:

Object considers the proposal to be a naive reaction to pressure from surrogacy agencies, which will benefit from facilitation of a more rapid allocation of a baby to commissioners.

This makes the mother a nobody, a vessel, deprived even of the right to be recognised as the gestational parent and the customer is everything. Gestation and parturition is downgraded to the rental of a womb. The gestational mother's name should be recorded as a parent. No exceptions. An accurate birth certificate is essential.

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. That means that the process is transparent for all parties.

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 proposal weakens the surrogates right to change her mind about the baby that she has born.

Object considers that there needs to be a recognition that in the vast majority of cases, it is the poor who are the surrogates and the rich who commission the surrogate. This is an unequal transaction, which results in consent that is frequently under informed if not uninformed, low payment, coercion, poor health care, and severe risks to the short- and long-term health of women who carry surrogate pregnancies.

The evidence which has been cited in the Consultation documents comes from mothers who have acquiesced to the arrangement and moved on. Ask a woman 'how was the birth? The day of the birth- she will describe the pain of labour. Ask her a year later and she will say it was OK.

15 Consultation Question 8:

Other

Please provide your views below:

Object questions whether this arrangement is viable as many arrangements are unrecorded and wonders what will happen if an Agency goes out of business? Better protection for the child's right to know the identity of biological/ gestational mother when a legal birth certificate is lodged in the usual archives for birth certificates.

Why are some parents shy to tell their children that they born of surrogates? Should be part of the contract.

If surrogacy is about forming families, lies have no place in families.

Not Answered

Please provide your views below:

Foregone conclusion language, so it is impossible to answer.

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

Yes, otherwise this limits the right of the child to discover their genetic origins in issues of identity and also risks attraction to a closely related person.

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:

Foregone conclusion language, so it is impossible to answer.

18 Consultation Question 11:

Yes

Please provide your views below:

(1) We Object to the procedure whereby the birth mother is expected to hand over her baby even if she immediately changes her mind. The mother should be given custody of the baby she has birthed. If the baby is given to the commissioning parents they have more power to argue the case for parent order.

(2) Object recommends that the surrogate has representation at this point, which must be legally aided so that she is equal before the law.

(3) Object questions whether this really is the surrogate's right or a system for going through the motions of a commercial arrangement? The preference should be the birth mother unless there is reason to object. She has nurtured the baby in her body, and her body is ready for the neonatal period.

19 Consultation Question 12:

Yes

Please provide your views below:

In the scenario where surrogacy is not banned, there should be the proviso that the birth mother has custody, should she wish and is legally aided to present her case.

20 Consultation Question 13:

No

Please provide your views below:

Object considers the criterion 'Reason to believe' is insufficient. There must be a professional assessment of whether the surrogate lacks capacity.

21 Consultation Question 14:

No

Please provide your views below:

Object opposes the premises of the new pathway.

22 Consultation Question 15:

Yes

Please provide your views below:

The surrogate's partner/husband, unless genetically related to the baby, should have no part in the surrogacy arrangement.

No

Please share your views below:

The surrogate's partner/husband, unless genetically related to the baby, should have no part in the surrogacy arrangement.

23 Consultation Question 16:

No

Please provide your views below:

OBJECT considers that only the birth mother's decisions are relevant in this case. There is no natural bond between the baby and the Commissioning Parents.

Who will grieve? The mother. Who will be disappointed? The commissioning parents.

No

Please provide your views below:

As above. The birth mother's views are paramount.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

The views of the birth mother are paramount.

This awful proposal assumes that the commissioning parents have bought the baby alive or dead.

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:

In the case in which the birth mother is deceased the commissioning parents should have to make an adoption application.

Object asks what safeguards /measures are planned in the new pathway should the woman surrogate die. What financial protections would there be for such a tragedy for the woman's existing children and family?

26 Consultation Question 19:

No

Please provide your views below:

We Object to a baby being registered as having dead parents. A baby has no bond with dead Intended Parents.

Imagine finding out that your mother gave you to dead people! This messes with the child's identity in a way which will cause confusion and anxiety in later life.

Should the surrogate so wish, she may keep the baby or offer the child to go through the adoption procedures in which case 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:

Please provide your views below:

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.

Yes. This is the arrangement that recognises the accurate facts of the birth.

27 Consultation Question 20:

No

Please provide your views below:

We Object to the waste of legal department drafting time. The 'second' Intended parent can apply to adopt the child.

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:

OBJECT recognises the description of temporary indicates a will to make a different permanent arrangement and this should be considered.

29 Consultation Question 22:

Please provide your views below:

OBJECT is opposed to this pathway per se. Object see very little evidence in the proposed changes that would reduce demand for surrogacy, but, rather making it easier in the UK for lawyers, agencies, those buying babies. Keeping the business in the UK.

No acceptable rational for making surrogacy easier, rather international evidence points in the other direction.

Object propose that the surrogacy business should be banned not made easier.

30 Consultation Question 23:

Please provide your views below:

OBJECT supports that priority should be given to the gestational mother unless she is deemed to be 'Unfit'. This should not be about which party offers the most comfortable life.

31 Consultation Question 24:

Please provide your views below:

Object find it remarkable given the years of current surrogacy enablement in UK that those involved are not, never have been, subject to Adoption and Child Act (ACA) 2002.

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

No. Currently those who may apply for a section 8 order without the leave of the court include only those who are already recognised in law as a parent of the relevant child, or who come within categories of persons who have an existing relationship with the child which is formalised in law. 'Intended parents' do not come within either of these categories. Unless and until a parental order is granted, only the birth mother is recognised in law as the parent of a child born as the result of surrogacy arrangements. Intended parents do not have this parental status, and they have no relationship to the child which has been formalised in law.

In most cases, intended parents would only need to consider a section 8 order application in circumstances in which they are in conflict with the birth mother about the child's living arrangements, or other significant aspects of the child's upbringing. Requiring intended parents to seek the leave of the court to make a section 8 application enables judicial scrutiny of their motivations for wishing to make an application, and allows for judicial consideration of the potential impact on the child and the child's birth mother (or other carers) of any court proceedings which would flow from such an application. Court proceedings relating to a child's upbringing (with which all section 8 proceedings are concerned) are significant interventions in private and family life which should not be undertaken lightly. They generally cause considerable stress and anxiety to the parties involved.

In many cases there will be a significant power imbalance between intended parents and women who become 'surrogate' mothers. Particularly in the context of commercial surrogacy (and we question how many arrangements are actually 'altruistic' intended parents will generally be wealthier than 'surrogate' birth mothers, and will therefore have easier access to legal advice and representation.

Judicial scrutiny of potential applications helps to safeguard the best interests of the child, and to prevent inappropriate intervention in the private and family life of the child and his or her birth mother (or other carers). It also helps to prevent repeated and vexatious applications to the courts.

33 Consultation Question 26:

No

Please provide your views below:

Object strongly recommends that the circumstances surrounding the 'handing over' of the baby should be further investigated to establish that the baby was not forcibly removed from the surrogate mother.

The Warnock Report states that a court of law should not have the ability to remove a child against the carrier's will, should she change her mind.

34 Consultation Question 27:

No

Please provide your views below:

Object cannot agree to a proposal which favours the commissioning parents and removes the rights of the gestational parent to be recognised. A reduction of court time and facilitation of the removal of the baby from the surrogate, with no consideration of the maternal feelings of the surrogate. The Warnock Report states that a court of law should not have the ability to remove a child against the carrier's will, should she change her mind. This should stand in law.

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:

Object recognises that despite good intentions a mother may not be able to part with the baby that she has nurtured in her own body for 9 months and then given birth.

The document accepts lightly the giving away a baby following the intense emotions associated with pregnancy and childbirth as 'some distress'. The surrogate mother should be recorded as the birth parent in law.

36 Consultation Question 29:

Please provide your views below:

Object considers that there should be no restrictions on the birth mothers' right to change her mind.

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:

Object proposes that the surrogacy business should be banned, not made easier.

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:

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Object predicts that there cannot be a valid sample of surrogates responding.

How will independent surrogates be sampled? Independent surrogates may mean prostituted women offered the 'option' of surrogacy (alternative to prostitution) to make money for pimps.

How many poor and uneducated women will respond? It is doubtful whether those who have been exploited in 'baby farms' which led to the BANNING OF SURROGACY IN INDIA, THAILAND, NEPAL AND CAMBODIA will respond.

<https://www.npr.org/2018/09/27/652075778/women-are-not-chattel-says-india-s-supreme-court-in-str?source=post>

39 Consultation Question 32:

Please provide your views below:

Object are concerned that the consultations in built pro-surrogacy bias, that wants to further support and promote surrogacy. Those responding on behalf of Surrogacy Agency will, of course, be promoting their businesses. While other Nations (India, Thailand, Nepal, Cambodia, France, Germany, Nordic countries) have banned the practice or heavily restricted its use as they have no hard evidence of the long term impact upon the child who is a surrogate or the mother who gave birth to them. Object are aware that in Northern Ireland, despite UK law, surrogacy is rarely practiced. Object are concerned that the consultation quoting UN & EU asserts there exists an entitlement to 'found a family' has been reinterpreted to 'found a family by any means necessary'. 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:

As this document proposes a forgone conclusion, stringent regulation will be essential if it goes ahead.

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

41 Consultation Question 34:

Please provide your views below:

Such detail is surprising in a document purporting to be a consultation.
In addition

Please provide your views below:

Protection of the rights of the gestational parent to change her mind and to have immediate custody of the baby. This would be counter to the financial interests of the Agency and therefore is an important consideration when dealing with the birth of a baby, who is not a 'thing', but a person.

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:

OBJECT notes that since UK has opted to 'legalise' selling babies, despite opposition from many quarters, there should be regulatory standards across UK. All lawyers, medics, agencies, children services, should (shameful so far they do not) work to standard protocols overseen by Government regulators, who enforce standard protocol compliance.

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:

Object find it shocking that the consultations prime concern is NOT the well being of the woman surrogate or the child, but the 'commissioners', so they can have ease of access to buying a baby.

Usually the woman surrogate is evidenced to come from poorer circumstances than the so called 'commissioners' and yet the law wants to describe that as 'altruistic' rather than what it actually is, commercial surrogacy which is not legal. The use of euphemism here tries to sanitise the process.

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:

OBJECT is aware that contracts agreed in surrogacy arrangements are not enforceable in law (evidence that even the law asserts wrenching a newborn from its birth mother is abhorrent) yet commissioners go to court to claim rights to the new born, in the event the birth mother changes her mind about giving away her child.

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:

FTThere should be a limit or there would be further facilitation to increase the attractiveness of setting up a Surrogacy Agency business

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:

OBJECT considers that advertising would be a vindication of our view that commercial interests rank above those of birth mother and baby.

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:

Object strongly assert that any 'reforms' should favour the birth mother as fact, all else is fraud.

Object agree with other authorities concerned with the well being of children and their mothers that a full birth certificates must in all cases retain the name of the birth mother, no exceptions.

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:

Object can see no reason why the person who carried and gave birth to the baby should not be recorded as the birth mother, unless the law facilitates the purchase of a baby as if it were a commercial transaction.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

The birth system of registration should continue to register the birth mother

Her husband, unless he is the genetic father should not be included. A birth certificate should remain as a record of who gave birth to the baby, not for whom the baby was commissioned. The genetic father should be recorded.

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:

There is a good deal of evidence that unless a child's origins are clear, identity confusion and possible mental health problems can result

55 Consultation Question 47:

Yes

Please provide your views below:

The birth system of registration should continue to register the birth mother. Her husband, unless he is the genetic father should not be included. A birth certificate should remain as a record of who gave birth to the baby, not for whom the baby was commissioned. The genetic father should be recorded. A national register is preferable to a Surrogate Agency Register

Yes

Please provide your views below:

As above

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:

Object strongly assert that birth facts should be disclosed to the surrogate child as soon as possible. Hiding such facts has evidenced (adoption research) from the voices of adopted children that hiding birth facts has life long negative consequences. The notion of 'being chosen, after being given away', is profoundly confusing and hurtful.

57 Consultation Question 49:

Other

Please provide your views below:

Object believe the complexities of surrogacy are such, with evidence that child minors are often sexually active long before they reach their 16/18th birthday. It is therefore imperative, not matter how hard to explain, that children born of surrogates where there exists a genetic connection with the possibility of cross-over should be told earlier than this consultation recommends.

Safeguarding children and birth mothers should be the prime goal of surrogacy not the feelings of the 'commissioners', which seem to be the priority here.

Please provide your views below:

Proviso (2) should apply

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:

It is therefore imperative, not matter how hard to explain, that children born of surrogates where there exists a genetic connection with the possibility of cross-over should be told earlier than this consultation recommends. This doesn't only apply to marriages and civil partnerships. Half the children in the UK are born to unmarried parents.

59 Consultation Question 51:

Yes

Please provide your views below:

Object reiterate that children born of surrogacy arrangement 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 maturation.

Please provide your views below:

Object reiterate that 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 maturation.

60 Consultation Question 52:

Please provide your views below:

Adopted children who find that their birth mother has raised a family are often traumatised by this knowledge and suffer rejection issues, unless they are welcomed into the birth mother's family.

Please provide your views below:

Adopted children who find that their birth mother has raised a family are often traumatised by this knowledge and suffer rejection issues, unless they are welcomed into the birth mother's family.

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. For the safety of the child if a parental order is made the courts should assess if this person is safe to be in the home where the child is cared for,

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

63 Consultation Question 55:

No

Please provide your views below:

Most unlikely that a woman giving birth in a surrogacy arrangement 'cannot be found' as her condition, scans, medical appointments and birth date will be closely scrutinised by the Commissioning Parents

No

Please provide your views below:

This favours the rights of the Commissioning Parents over the birth mother, who is then not equal before the law.
This would be an invasion of the Human Rights of the birth mother

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Yes

Please provide your views below:

OBJECT does not support the practice of surrogacy.
Should the domicile requirement be abandoned international Agencies will turn to the UK as a surrogacy destination as other countries ban the practice.

Please provide your views below:

Absolutely

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:

We OBJECT to the term 'medical necessity, which interprets the Law as the right to have a family as the right to have a baby, which is not the same thing.

70 Consultation Question 62:

Please provide your views below:

Please provide your views below:

There is no such thing as 'Medical Necessity'. It is either infertility or the inability to carry a baby to term.

71 Consultation Question 63:

Yes

Please provide your views below:

The facts of a child's genetic inheritance should be known. The birth mother is the first mother.

Please provide your views below:

Not Answered

Please provide your views below:

72 Consultation Question 64:

No

Please provide your views below:

The same limitations placed upon adoptive parents should apply in surrogacy arrangements

Please provide your views below:

Yes

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:

Other

Please provide your views below:

It depends on the purpose of the testing.
This is most unclear from the question.

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:

Based on the evidence of economic disparity between surrogate and Commissioning Parents, the surrogate should be legally aided to confirm informed consent.

77 Consultation Question 69:

Yes

Please provide your views below:

Object are shocked that given the ability for women surrogate to be open to abuse and prey by commissioners whose reason for buying a baby are far from wholesome, are not subject to rigorous investigation or part of a nation wide register that records and monitors the welfare of children born of a surrogate mother. If such effective (as currently seems the case) monitoring cannot be implemented surely this evidences the risks that past and present surrogate children face if the commissioners had covert reasons for obtaining a child.

Please provide your views below:

They should be subject to rigorous investigation or part of a nation wide register that records and monitors the welfare of children born of a surrogate mother.

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:

Object are concerned that the risks to a first time pregnancy by a surrogate mother is not dealt with seriously enough. Surely evidence of a previous healthy pre and post natal experience should be the standard.

In the cases of one child infertility the resulting trauma in attempting further pregnancy is obvious.

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:

OBJECT finds the consultations notion that women surrogates can undertake 'unlimited' surrogacy arrangements both exploitative and repugnant. The consultation seems to view women surrogates as brood mares akin to the chilling Handmaidens Tale (1985) M. Attwood
Object are clear they have evidenced based reasons why we appose surrogacy. We oppose woman surrogates being treated as 'baby machines' . There must be limits to the number of pregnancies and IVF treatments that a surrogate endures. Object again state the callous nature of this consultation , evidenced by its emphasis on 'commissioners' rights rather than seeking to ask whether surrogacy is morally and ethically right.

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:

Object see all forms of payment as evidence that surrogacy is 'a business' in which powerful players make money at the expense of mostly women from the poor end of society. The argument that women surrogates are providing a 'service' and therefore are entitled to be paid, really sums up all that is wrong with all attempts to present the practice of surrogacy as a health brand fair business deal. It's illegal for one human being to buy another, that is slavery.

81 Consultation Question 73:

Please provide your views below:

No matter what the UK law says, to defend this surrogacy practice you cannot keep presenting such arrangement as 'altruistic' when in fact just by reading all the notes from the surrogacy consultation, it is a commercial business.

The person who benefits the least is the surrogate.

Lawyers, agencies promoting surrogacy are not altruistic they are business people, using the misery of childlessness and poor women surrogates in a chain of events where the orchestrators make huge profits. We Object.

82 Consultation Question 74:

Please provide your views below:

The questions about payment are evidence in itself that surrogacy is 'a business' in which powerful players make money at the expense of mostly women from the poor end of society.

83 Consultation Question 75:

Please provide your views below:

The questions about payment are evidence in itself that surrogacy is 'a business' in which powerful players make money at the expense of mostly women from the poor end of society.

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, although questions about payment are evidence in itself that surrogacy is 'a business' in which powerful players make money at the expense of mostly women from the poor end of society.

85 Consultation Question 77:

Please provide your views below:

Yes, but the surrogate is not usually in a position to negotiate on equal terms

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:

At last a question which shows the risks that the birth mother undertakes in these so-called 'altruistic' arrangements.

Lawyers, agencies promoting surrogacy are not altruistic they are business people, using the misery of childlessness and poor women surrogates in a chain of events where the orchestrators make huge profits. .

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:

Yes, there should be provision for the family left behind, particularly the children of the surrogate

89 Consultation Question 81:

Please provide your views below:

90 Consultation Question 82:

Not Answered

Please provide your views below:

This abominable business should be banned as has been done in multiple countries, not encouraged as the tone of the consultation recommends. Object see all forms of payment as evidence that surrogacy is 'a business' in which powerful players make money at the expense of mostly women from the poor end of society. The argument that women surrogates are providing a 'service' and therefore are entitled to be paid, really sums up all that is wrong with all attempts to present the practice of surrogacy as a health brand fair business deal. It's illegal for one human being to buy another, that is slavery.

Not Answered

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

No.

Should this practice go ahead, this question shows the callousness with which a woman could be treated.

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:

OBJECT opposes the practice per se

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:

Should this practice continue the surrogate should have the right to the financial remuneration agreed

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:

OBJECT considers this to be a naive question when there is evidence that 'representatives' of overseas surrogates are often forcing a woman to be surrogates. Some of the evidence coming out of overseas countries depicts husbands as the representative of his wife, whom he is offering for surrogacy.

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:

Object supports the move by India, Cambodia and Thailand and other countries to stop surrogacy as the abuse of women as surrogates has evidenced the illegal trade of exploiting poorer powerless women to produce babies that are sold to wealthy baby buyers and traffickers. UK needs to join those countries which have banned surrogacy as a trade in babies.

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?

No

Please provide your views below:

OBJECT opposes the provision of a guide for intended parents of international surrogacy by the Government.

It is the validation of the practice of surrogacy as a commercial exchange, opposed by many international organisations.

The European Centre for Law and Justice note that,

“Commercial surrogacy paves the way for baby-selling and women exploitation. In some places, the same rings seem to be involved in prostitution and surrogacy. In Asia the same methods are used to recruit young women in the countryside for prostitution and for surrogacy: lure them with the promise of a respectable job, rape them and take their passports away. Mafia involvement is also suspected in Eastern Europe.”

(Surrogate Motherhood: A Violation of Human Rights, Report presented at the Council of Europe, Strasbourg, on 26 April 2012, p.4)

This proposal is tantamount to facilitating the process.

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:

We consider that this should be considered in the country of the babies birth in keeping with the laws of that country and International Law

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:

Object find the status of the commissioners to be extremely troublesome, which is never mentioned. Unlike the majority of parents they will not have experienced pregnancy, in all its complex stages, or be able to bond at birth or lactate. Yet the consultation proposes to treat commissioners as if they have experienced all these physical and emotional elements that pregnancy presents to new parents. Is that moral?

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Object is against the attempt to normalise the practice of surrogacy which a European Parliament resolution called an 'extreme form of exploitation' If we are not allowed to buy and sell people in slavery – how is it possible to rent an organ, a womb, which interacts with every cell of the surrogate mother's body?

(a) The document favours surrogacy based on the societal expectation that everybody should be able to have a child and interpretation of Human Rights Law, namely Articles 8 and 12 and 14 (a right to respect for an individual's private and family life, the right to found a family, and protection from discrimination, respectively). However there is nothing to say that everyone has a right to have a child. There needs to be a much wider societal discussion as to whether a wish/desire/longing, however heartfelt, should be the basis on which a 'right' should be established.

(b) A heavy reliance on the propaganda of Surrogacy Agencies (which have a vested interest in keeping the practice going) and insufficient evidence from other sources. The reference to a biblical story ref40 in which a maidservant acted as a surrogate is shameful. Many practices, such as slavery and servitude in biblical times is no longer acceptable.

(c) Liberal feminists mentioned as supporting surrogacy favour the right of women to 'choose' prostitution and are therefore in favour of a women choosing to be a surrogate. Like prostitution surrogates are not choosing surrogacy over a glittering career.

(d) Object suggests a critical analysis of research methods which averred that children of surrogates arrived at the opinion that they 'are proud of their birth mothers'. Coaching by surrogate parents must be considered as a factor.

(e) The real history of surrogacy. Commissioning parents often do not accept babies born with disabilities.

Baby Gammy- born 2013 – Downs Syndrome- he was left behind in Thailand, with his surrogate mother a poor food vendor but his healthy twin was taken. They denied they left their son with a disability. An American couple offered their surrogate \$10,000 to abort a disabled baby. A baby Left in India 2012 Twin brother left behind because the couple already had a son. India and Thailand shut down surrogacy business.

(f) The lack of public attitudinal research in this area is mentioned, but skated over in the introduction.

There is usually, (not maybe as in the document) an economic, social and educational disparity between the commissioning parents and the surrogate. The right of the surrogate to protest compared with the arguments that well funded Council on behalf of future parents can make is diminished by her lower economic and social status. An economic, social and educational disparity is acknowledged in the report, but no consequences for all participants to be treated equally before the law.

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:

Object reject the consultations demand that commissioners become the 'legal parents' the instant the baby is born. Birth mother, must be afforded space and respect in case she wants to change her mind, which she is legally entitled to do.

Positive for the child, who can easily access the identity of the birth mother, in the same way as any adopted child, who must know the name of their birth mother to apply.

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:

We OBJECT to the implication in the use of the term 'medical necessity' that infertily confers a right to a child.

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

What about women offering surrogacy arrangements, How will proposals affect their views?

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:

IMPACT 1

Where surrogacy arrangements exist, there is always a risk that some women will be coerced into becoming 'surrogates'. This may happen in relation to 'altruistic surrogacy', where women may be placed under considerable pressure by family members. It is particularly likely in relation to commercial forms of surrogacy.

The European Centre for Law and Justice note that,

"Commercial surrogacy paves the way for baby-selling and women exploitation. In some places, the same rings seem to be involved in prostitution and surrogacy. In Asia the same methods are used to recruit young women in the countryside for prostitution and for surrogacy: lure them with the promise of a respectable job, rape them and take their passports away. Mafia involvement is also suspected in Eastern Europe."

(Surrogate Motherhood: A Violation of Human Rights, Report presented at the Council of Europe, Strasbourg, on 26 April 2012, p.4)

Particularly if the law is changed to enable financial payments other than costs and expenses associated with pregnancy, we believe that a specific criminal offence related to actions taken to coerce a woman into becoming a 'surrogate', or to enter into an agreement to do so, should be created.

In view of the patterns of criminal activity which are associated with coerced surrogacy, it meets the definition of 'trafficking in persons' contained in Article 3(a) of the 'Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations (UN) Convention against Transnational Organised Crime 2000' ('the Palermo Protocol'). The definition is as follows:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt by persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to

slavery, servitude or the removal of organs.’ (Article 3(a))

Coerced surrogacy is a form of exploitation which comes within the Protocol’s definition, as it includes “forced labour or services, slavery or practices similar to slavery” and “servitude”. It may or may not involve arranging or facilitating the travel of the woman concerned. However, where it does not involve travel, it would nevertheless come within the provisions relating to slavery and servitude contained in the Modern Slavery Act 2015.

We therefore propose that a criminal offence is created which recognises coerced surrogacy both as a form of trafficking in persons where it meets the requirements for a trafficking conviction under domestic law, and as a form slavery or servitude as set out in the Modern Slavery Act 2015.

We also propose that, in line with Article 3(b) of the Palermo Protocol, the consent of a woman to act as a surrogate should not be a defence to an allegation of coerced surrogacy where any of the means used to obtain her consent come within the Protocol’s definition.

Article 3 (b) states,

‘The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.’ (Article 3(b))

Section 1(5) of the Modern Slavery Act 2015, which relates to slavery, servitude, and forced and compulsory labour, takes an approach to the question of consent which is in line with the Protocol, and states,

“The consent of a person (whether adult or child) to any of the acts alleged to constitute holding the person in slavery or servitude, or requiring the person to perform forced or compulsory labour, does not preclude a determination that the person is being held in slavery or servitude or required to perform forced or compulsory labour.”

The maximum penalty for conviction on indictment for an offence under section 1 of the Modern Slavery Act is life imprisonment. The actions involved in coercing a woman into becoming pregnant, gestating and giving birth to a child for the offender’s financial gain, and with the intention of removing that child from her at birth, are similar in nature and severity to the offences set out in section 1 of this Act.

We therefore propose that a specific offence of coercing or forcing a woman to become a ‘surrogate’ mother should be created, and that the maximum penalty for this offence should be life imprisonment. While it could be argued that such conduct already comes within the Modern Slavery Act’s provisions relating to slavery or servitude, we believe a specific offence is required in order to bring about appropriate criminal justice response to the phenomenon of coerced surrogacy, and to improve awareness of its nature within both criminal justice agencies and the wider public.

<https://www.ieb-eib.org/ancien-site/pdf/surrogacy-motherhood-icjl.pdf>

IMPACT 2

Participants in surrogacy arrangements may be ill-informed of the risks.

The medical process for surrogacy entails risks for the surrogate mother, the young women who sell their eggs, and the children born via the assisted reproductive technologies employed.

The risks to women include Ovarian Hyper Stimulation Syndrome (OHSS), ovarian torsion, ovarian cysts, chronic pelvic pain, premature menopause, loss of fertility, reproductive cancers, blood clots, kidney disease, stroke, and, in some cases, death. Women who become pregnant with eggs from another woman are at higher risk for pre-eclampsia and high blood pressure.

Children born of assisted reproductive technologies, which are usually employed in

surrogacy, also face known health risks that include: preterm birth, stillbirth, low birthweight, fetal anomalies, and higher blood pressure. A surrogate pregnancy intentionally severs the natural maternal bonding that takes place in pregnancy—a bond that medical professionals consistently encourage and promote. The biological link between mother and child is undeniably intimate, and when severed has lasting repercussions felt by both.

IMPACT 3

When market norms are applied to the ways we allocate and understand parental rights and responsibilities, children are reduced from subjects of love to objects of use. This ethical argument features strongly in the Report of the UN Special Rapporteur in January 2018, for example, who concluded that “commercial surrogacy, as currently practised usually amounts to the sale of children as defined under international human rights law.”⁸⁸ The surrogate is depicted as no more than a vessel throughout.

To save surrogacy from accusations like this, some resort to talking of so-called “altruistic” surrogacy. If the mother is not being paid, there is no exploitation going on. Maybe she is doing it out of generosity, for a friend, a daughter or a sister. The distinction between ‘altruistic’ and commercial surrogacy is not as clear cut as the consultation document seems to imply. There is evidence that surrogates still get paid under the table, which is the case in Britain. That a poor woman in India acts as a surrogate in an altruistic way rather than for gain is not credible.

IMPACT 4

The proposal of a New Pathway changes the nature of a birth certificate. It should be a record of the baby and the person who gave BIRTH. The birth of the baby BY not the birth of the baby FOR.

If one of the adopting parents is the sperm donor the biological facts of the birth should be on the child’s birth certificate. People have a need to know that part of their identity. Adopted children often seek siblings, some decades after their adoption. Surrogate mothers have usually had children before they become surrogates.

Whatever mechanism is chosen to make commissioning parents the adoptive parents the birth mother’s name should be on the certificate. The child should have reasonable access to information about who birthed them. The person who gave birth to a child should not be eradicated from the child’s history.



Association of **Lawyers for Children**

Promoting justice for children and young people

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The Association of Lawyers for Children (hereafter “ALC”) is a national association of lawyers working in the field of children law. It has close to 1,000 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Other legal practitioners and academics are also members. Its Executive Committee members are drawn from a wide range of experienced practitioners from both sides of the legal profession practising in different areas of the country. Several leading members are specialists with over 20 years’ experience in children law, including local government legal services. Many have written books and articles and lectured about aspects of children law and hold judicial office. The ALC exists to promote access to and equality of justice for children and young people within the legal system in England and Wales in the following ways:

- i. lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice;
- ii. lobbying against the diminution of such mechanisms;
- iii. campaigning and advocating on against any form of discrimination which may affect children within the family justice system
- iv. providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the rights, welfare, health and development of children;
- v. providing a forum for the exchange of information and views on the development of the law in relation to children and young people;
- vi. being a reference point for members of the profession, governmental organisations and pressure groups interested in children law and practice; and
- vii. funding or co-funding research where we perceive gaps in knowledge or evidence relating to changes in policy and practice in children proceedings.

The ALC is a stakeholder in respect of all government consultations pertaining to law and practice in the field of children law and welcomes this opportunity to provide its views in respect of this consultation.

Introduction

1. The ALC confines itself in this response document to addressing those areas of the Commission's proposals that are within its areas of expertise with a particular focus on the rights of children and the importance of ensuring that children's interests are properly and fully represented at all parts of the pre-proceedings stage and within proceedings when a court is considering the acquisition of legal parentage in any context including surrogacy.
2. It is the ALC view that the role of the parental order reporter provides vital protection of the rights and interests of the individual child within the court process. They are independent of any party and they provide the Court with important information as to whether the making of the order serves the welfare best interests of the subject child. It is the ALC view that a parental order should only be made if the child's welfare supports the making of that order. This is consistent with the making of any order which assigns legal parenthood and indeed parental rights under English Law.
3. The ALC reminds the Commission of the domestic and international legal obligations which require the state to safeguard and promote the rights of children within their family and their right to identity. Any legal process which seeks to establish or indeed to terminate a legal relationship between children and their genetic parents must be compliant with the fair trial obligations of Article 6 and the right to respect for family and private life under Article 8 of the European Convention on Human Rights. As such it is imperative that any legal process which is proposed is thorough, transparent and fully cognisant of the rights of the child. Moreover Article 7 of the UNCRC requires that the state protect the child's right to identity. The ALC takes the view that the parental order reporter plays an important function by investigating the child's circumstances and advising the Court as to whether a parental order serves the child's welfare best interests.
4. The ALC would have grave concerns about the removal of the role of the parental order reporter from the parental order process. The ALC considers it to be vital to the welfare of children that this provision is retained in any scheme for the making of parental orders which might emerge in the future legislation. While it recognises that intended parents have found the process to be cumbersome that in itself cannot

justify removing the independent investigative role of the parental order reporter. This is particularly important in international surrogacy cases. The ALC considers that great caution is required when downgrading the importance of an independent investigation of a child's circumstances. The effect of a parental order is lifelong. It transfers legal parenthood. There is a wider public interest in ensuring that the child's circumstances are fully and independently investigated. It also has to be balanced against the potential status benefits that the child might lose, if the surrogate is not the legal mother of the child from birth, for example immigration status. Currently a child will benefit from the immigration status of his legal parents and his intended parents as the making of a parental order does not remove this status from a child. This is a real benefit to a child that will be lost if the surrogate is never a legal parent of the child.

Removal of Post-Birth Welfare Assessment [Paras 7.70 – 7.77; 8.38 – 8.51; 8.104 – 8.106]

5. The Law Commission proposes that, within the “new pathway”, all vestiges of a post-birth welfare assessment would be removed. Instead, *‘account should be taken of the welfare of any child that may be born as a result of the surrogacy arrangement at the pre-conception stage’*. In making this recommendation, the Law Commission draws parallels with: (a) children conceived by way of fertility treatment at a UK Clinic; and, (b) children conceived naturally.
6. There are a number of potential difficulties with this approach:
 - a. A pre-birth welfare assessment of any sort is inevitably undertaken in a vacuum and at a level of generality, without reference to the individual child conceived. Any such assessment is likely to be less rigorous and offer a lesser form of protection for the child. It also cannot take into consideration any other relevant factors post birth which have an impact on the child throughout his life.
 - b. This is particularly the case given that, on the whole, a pre-birth welfare assessment of the form contemplated is predominantly based on self-reporting by the parents (albeit that there is guidance in the Code of Practice and the Law Commission propose criminal record checks). The individuals at the clinics who

would be ensuring that such forms are completed are not child welfare professionals, and the level of scrutiny applied to forms completed by intended parents at UK clinics has been shown to be limited (See the line of cases from *Re HFEA 2008 (A and other) (legal parenthood :written consent)* [2015] 1WLR 1325.

- c. The parallel with children conceived by way of fertility treatment is not necessarily an accurate one. In terms of the need for a sufficiently rigorous welfare assessment, there is a fundamental difference between fertility treatment assisting in the conception of a child who will be carried by the intended mother, and the conception of life to be carried by a person intending to relinquish care upon birth. However small, the risk of exploitation or welfare concerns arising is greater in the latter than the former. The ALC notes that where there is a risk of exploitation impacting on the welfare of the child particularly where the child may be genetically related to the gestational mother who acts as surrogate, there is a strong imperative that there is an independent holistic welfare analysis post birth such as is currently carried out by the parental order reporter.
- d. The ALC considers that the parallel with natural conception is also an inaccurate one. Inevitably, however a child is conceived, there is always the possibility for previously unknown welfare concerns to arise post-birth. However, the difference from the child's perspective is the greater potential in a surrogacy arrangement for complex adult dynamics to give rise to such concerns.
- e. The Law Commission also proceeds on the basis that *'the way that the law currently works means that the court's discretion about whether to make a parental order – once it has the ability to do so – is, in practice, very much circumscribed'* (para 7.73), and that *'we note that surrogate-born babies currently live with their intended parents whilst awaiting the making of a parental order. A number of months may pass from the birth of the child to the child's welfare being considered...'* (para 7.71). However:
 - i. This wrongly implies that, to date, the exercise of the court's discretion has been little more than a “rubber stamp”.

- ii. The rigour of a welfare assessment isn't necessarily dependent on its proximity to the birth, but on the ability of a suitably qualified professional meeting with both parents with the child in their home.
- 7. The Law Commission's proposal to remove a post-birth welfare assessment is based, in part, on the perceived benefit that this brings to the intended parents in avoiding the need for any post-birth court process. However, this overstates the manner in which the balance is currently struck. A large number of individuals seek a parental order without legal advice, and in such circumstances the parental order reporter collates the relevant material for the court. Although rigorous, the welfare assessment is a comparatively non-invasive process, involving a single home visit by the CAFCASS officer. The ALC does not support the proposal and considers that it does not provide sufficient safeguards for the rights and interests of the subject children.
- 8. The Law Commission argues that *'we provisionally consider that the child's welfare is better protected by the screening and procedural requirements being imposed prior to conception...and by enabling the intended parents to be legal parents from the birth of the child'*. However, while certainty as to legal parenthood at the time of birth, with the consequential stability that it brings, is not to be discounted, this has to be balanced against the need for there to be a proper welfare assessment tailored to the individual child in the circumstances in which they will be living, as opposed to prior to their conception. The ALC considers that the current scheme whereby the welfare assessment falls first to the parental order reporter and then to the Court should be retained.

Invitation to Consider Whether There Should be Any Amendment to the Welfare checklists [Paras 8.107 – 8.121]

- 9. The Law Commission invites consultees to give a view as to whether there should be amendments to either of the following:

- a. The welfare checklist in the Children Act 1989, so as to provide additional factors to take into account when determining the arrangements for children born by way of a surrogacy arrangement;
 - b. The welfare checklist in the Adoption and Children Act 2002, so as to provide additional factors to take into account when deciding whether to make a parental order.
10. The Law Commission at paragraph 8.116 provides a list of possible additions.
11. The ALC considers that there does not seem to be any need to amend either checklist. The courts have already had to determine a number of issues in both contexts, in which the welfare checklists as expressed have proved sufficient to guide the court's decision-making. There is a real risk that including additional factors over-complicates any welfare determination, or prejudices one factor above others. The ALC considers that the welfare checklist which is consistent with other legislation should be retained in its current form.
12. The court, and in particular the Court of Appeal, have emphasised how the current and well-tested approach to welfare is sufficient to enable the court to consider the individual circumstances of each case and attach appropriate weight to various factors, depending on the circumstances (e.g. *Re H (Surrogacy Breakdown)* [2017] EWCA CIV 1798; *Re M (A Child)* [2017] WCA Civ 228).

Automatic Parental Responsibility [Paras 8.131 – 8.132]

13. The Law Commission proposes that, in relation to children born outside the “new pathway”, the intended parents should acquire parental responsibility automatically where: (a) the child is living with them or being cared for by them; and, (b) they intend to apply for a parental order.
14. On one view, there is a benefit to the child from this reform as it ensures that, at the earliest opportunity, his carer's have parental responsibility for him and so are able to

make urgent or important decisions if necessary. However, the ALC notes that there are some issues with this proposal:

- a. It is unclear how such PR would be conferred. If it is intended to be automatically, the criteria proposed are arguably too vague and could lead to uncertainty.
- b. For example, it is unclear whether this would confer PR on intended parents who are engaged in a welfare dispute as to the arrangements for a child with the surrogate, and who care for the child in a shared care arrangement pending a welfare determination by the court. (Arguably, there is a benefit to it applying in such circumstances, as it levels the playing field to some extent pending the court's determination and reduces the risk of unilateral action by one set of parents).

Enabling the Court to Dispense with the Surrogate's Consent [Paras 11.50 – 11.58]

15. The Law Commission proposes that the criteria for a parental order be amended, such that the consent of the surrogate is not an absolute requirement. It proposes that the court have the power to dispense with the surrogate's consent if the child's welfare requires it, in a manner akin to adoption.
16. The proposal is that the court should have the power to dispense with the surrogate's consent, and that of any other legal parent, where: (a) the child is living with the intended parents with the surrogate or any other legal parent's consent; or, (b) following a determination by the court that the child should live with (or have his "primary residence" with) the intended parents. This power would be subject to the same welfare principle as within the Adoption and Children Act 2002.
17. While the aim of this proposal is laudable, avoiding a situation such as that in *Re AB (Surrogacy: Consent)* [2017] 2 FLR 217, there are a number of difficulties with it:
 - a. This power would usually only fall to be exercised where there is, or has been, a dispute between the surrogate and the intended parents. The

proposal wrongly proceeds on the basis that the outcome of that dispute would be binary – the child lives with one set of parents or the other. That ignores the possibility (likelihood?) that the court may order some form of shared care arrangement.

- b. This proposal risks encouraging unnecessary litigation as to the arrangements for the child, as a “win” in the form of a “live with” order would make the difference between a parental order being available or not.
- c. The ALC is concerned is that any legal framework which might dispense with the consent of the surrogate adopt the approach set out in the Adoption and Children 2002 at s.52, which provides that the consent of the birth parent may not be dispensed save in limited welfare driven circumstances. As such the ALC proposes that the consent of the surrogate should only be dispensed with if;
 - i. The surrogate and her husband cannot be found
 - ii. The child’s welfare requires a parental order to be made.
- d. The ALC considers that there is some benefit to the interest of children generally but within the context of removing and attributing legal parenthood that there is consistency of approaches between different legislative frameworks. Moreover it is the view of the ALC that in circumstances where the Court is invited to dispense with the consent of the surrogate because the child’s welfare requires it, a parental order reporter should be mandated by legislation to provide a report to the Court as to whether that is the case. The ALC considers that to be necessary to consistently safeguard and promote the interests of children.

Association of Lawyers for Children

11th October 2019

Response ID ANON-2V7F-YJQ8-H

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-09-07 14:13:28

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

None. All should be heard by a senior judge

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

After 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:

The birth mother should automatically be the legal parent. The rights of the child take precedence.

15 Consultation Question 8:

Other

Please provide your views below:

Another period

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Other

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

I disagree with the proposals

18 Consultation Question 11:

No

Please provide your views below:

The mother should be the legal guardian and needs to time.

19 Consultation Question 12:

Other

Please provide your views below:

The mother should be the legal guardian before birth and at least 6 weeks afterwards

20 Consultation Question 13:

No

Please provide your views below:

21 Consultation Question 14:

No

Please provide your views below:

After birth

22 Consultation Question 15:

No

Please provide your views below:

The rights are for the child

Yes

Please share your views below:

Normal legal rules should apply

23 Consultation Question 16:

No

Please provide your views below:

There should be no difference

No

Please provide your views below:

The birth mother is always the mother

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

The birth mother is always the mother

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

26 Consultation Question 19:

No

Please provide your views below:

The birth mother is the mother

Please provide your views below:

Option 2

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

The birth mother should always be the legal parent at birth

29 Consultation Question 22:

Please provide your views below:

The birth mother is the legal mother and should only be decided after by the courts

30 Consultation Question 23:

Please provide your views below:

The rights of the child outweigh all others

31 Consultation Question 24:

Please provide your views below:

The welfare of the child

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

No. Risk of exploitation to women and children

33 Consultation Question 26:

No

Please provide your views below:

The birth mother is the legal mother and should have the responsibility for the welfare of child after birth while in gestation.

34 Consultation Question 27:

No

Please provide your views below:

The birth mother has rights after the birth.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Other

Please provide your views below:

The birth mother should have automatic rights

36 Consultation Question 29:

Please provide your views below:

The birth mother should have the automatic right during and after birth

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Other

Please provide your views below:

Disagree with the 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:

No

Please provide your views below:

No

40 Consultation Question 33:

No

Please provide your views below:

Surrogacy is a violation of human rights

Other

Please provide your views below:

Other

Please provide your views below:

There should be no surrogacy organisations

41 Consultation Question 34:

Please provide your views below:

None of above it should not happen

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:

There should not be surrogacy organisations

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:

None

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:

No surrogacy agencies

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Not Answered

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

It is a violation of human rights

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:

It should not be promoted

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:

Birth mother should be recorded as mother

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

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:

A child should be able to find their birth mother

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:

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:

63 Consultation Question 55:

No

Please provide your views below:

Protection of birth mother and child

No

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Other

Please provide your views below:

Only domiciled

Please provide your views below:

Domiciled

65 Consultation Question 57:

Please provide your views below:

Not reformed

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:

Disagree with the pathway

67 Consultation Question 59:

Other

Please provide views below:

Not be available

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?

No

Please provide views below:

No medical necessity

70 Consultation Question 62:

Please provide your views below:

Please provide your views below:

There is no necessity to have a surrogate.

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

Yes

Please provide your views below:

73 Consultation Question 65:

Yes

Please provide your views below:

No

Please provide your views below:

Too young and vulnerable. Open to coercion.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

No

Please provide your views below:

No surrogacy

Please provide your views below:

75 Consultation Question 67:

Other

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:

But birth mother retains legal rights after birth

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

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:

Health of woman is paramount

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:

No payment

81 Consultation Question 73:

Please provide your views below:

No paid surrogacy

82 Consultation Question 74:

Please provide your views below:

No paid surrogacy

83 Consultation Question 75:

Please provide your views below:

No 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:

No monetising surrogacy

85 Consultation Question 77:

Please provide your views below:

No

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

No - how do you define?

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:

At zero

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

No. A good reason not to allow surrogacy if it may end in death. Open to abuse

89 Consultation Question 81:

Please provide your views below:

No. Too difficult to enforce

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:

a fixed fee set by the regulator.

Please provide your views below:

At zero

Please provide any views below:

None

91 Consultation Question 83:

Please provide views below:

No!

Not Answered

Please provide your views below:

Surrogacy should not be commercialised

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:

Neither

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

No

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

None

95 Consultation Question 87:

Please provide your views below:

Only be after the birth and no payment

96 Consultation Question 88:

Other

Please provide your views below:

No pathway

Yes

Please provide your views below:

No pathway and no dictating a mother's lifestyle. Against human rights.

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

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:

Protection of the child 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:

Child protection from trafficking

No

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Please provide your views below:

No

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

No

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

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:

Birth mothers rights

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Full restrictions

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

No

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

No

Please provide your views below:

Maternity leave affects the birth mother for biological reasons.

111 Consultation Question 103:

Please provide your views below:

No

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

No. It's a biological right.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

No. Only reforms to protect the child and the birth mother from trafficking, coercion.

115 Consultation Question 107:

Please provide your views below:

Yes - Protection for birth mother and child.

Please provide your views below:

Full protection for birth mother and child at all time should be the priority - not potential surrogate parent. It is not their right.

Please provide your views below:

To protect the birth mother at all times and her wishes to protect against coercion.

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:

The impact on the birth mother and the child rather than potential surrogate parents. The rights of the mother and child should always take precedence due to danger or abuse for both. The greatest protection should be placed for women who are at risk and their own responsibility to the child before birth and the rights over their own bodies. Commoditising women and the birth of babies does not seem to allow them the same human rights afforded to men. Having a child that you are not able to carry yourself is not a right and laws that enable the commodification of childbirth are open to dangerous practices.