



Surrogacy: Frequently Asked Questions

What is surrogacy?

Surrogacy is when a woman (the surrogate mother) agrees to bear a child for a couple (the intended parents) and then surrender the child to the intended parents at birth.

How does surrogacy work?

There are two types of surrogacy that can take place and which option is taken, is very much dependant on the couple's individual circumstances.

Partial Surrogacy, also known as Straight or Traditional surrogacy uses the egg of the surrogate mother and the sperm of the intended father. The child will as a result be the biological child of the surrogate mother and the intended father. This method can either be performed at an IVF clinic or through artificial insemination at home.

Full Surrogacy, also known as Host or Gestational Surrogacy uses the egg of the intended mother and the sperm of the intended father. The child will as a result be the biological child of the intended mother and father and will bear no biological connection to the surrogate mother who will be simply 'hosting' the child. If undertaken, this method must be performed at an IVF clinic.

Who is the legal mother?

The law states that the legal mother of a child is always the woman who gives birth to the child. As such, whether partial or full surrogacy takes place, the surrogate will always be the legal mother. This means that the intended mother will have no recognition as a parent immediately following birth, even if she is the child's biological mother.

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Who is the legal father?

If the surrogate mother is married or in a civil partnership (post 6 April 2009) then her husband (or civil partner) will automatically be the legal father or second parent, unless they can show they did not consent.

If the surrogate mother is unmarried, then the intended father is the legal father.

Who goes on the birth certificate?

It is the responsibility of the legal mother to register the birth. The surrogate mother, being the legal mother will go down on the birth certificate and as such will acquire parental responsibility immediately following the birth. If she is married or in a civil partnership, her husband or civil partner will go down on the birth certificate as the father or second parent.

If the surrogate mother is unmarried, the intended father can be placed on the birth certificate and as such will acquire parental responsibility along with the legal mother. If he is not named on the birth certificate, he may later acquire parental responsibility by signing an agreement with the surrogate mother or by an application to the Court for a Parental Responsibility Order.

How is parenthood re-assigned?

Six weeks after the birth of the child and before 6 months has elapsed, the intended parents can apply to the Court for a Parental Order, providing one of the parents is the biological parent. When the Order is granted, the intended parents will have full and permanent rights over the child and at that stage the surrogate mother (and her husband / civil partner if applicable) will relinquish all rights.

A new birth certificate will also be issued naming the intended parents as the legal parents, which replaces the original birth certificate.

Can I protect my position?

In the UK, there is nothing that any of the parties can do either before the birth or in the first 6 weeks following birth, to secure their position with certainty. This is the case, even if a written agreement has been signed and reasonable expenses of the surrogate have been paid. As such a surrogate is able to change her mind about relinquishing all legal rights over the child.

Written agreements may help to manage the parties expectations, however they will not bind the Court. The Family Courts have in practice been sympathetic to intended parents who apply to enforce such agreements, when the surrogate

has changed her mind and as such may be taken into account if a dispute later arises, however the agreement will not act as a guarantee.

Can payments be made?

In the UK it is illegal to pay a fee to a surrogate and only reasonable expenses can be paid. It is also a criminal offence to advertise and agree that you are willing to pay more than reasonable expenses.

Can I advertise?

In the UK it is illegal (a criminal offence) to advertise for a surrogate mother. As such a number of organisations are in place to assist individuals looking to engage in this process by providing a connection service. If you are interested in becoming a donor or a surrogate, you can freely register on certain websites and create a profile.

Can I do surrogacy if I am in a same sex relationship?

Yes. Following a change in the law, same sex partners can now apply to Court for a Parental Order and as such same sex partners can become the legal parents of a child conceived by surrogacy.

Can I do surrogacy as a single person?

No. Parental Orders reassigning parenthood are only available to couples (whether married, civil partners or cohabiting). At least one of the parties must also be genetically related to the child. As such, surrogacy is very difficult for single people. If a Parental Order is not available then other options should be considered including the option of being a co-parent or an application to Court for adoption or a residence order.

What rights will the child have?

If you conceive at a clinic in the UK details of the treatment and any child conceived are held on the Human Fertilisation and Embryology Authority's Register of Information. As such, upon reaching the age of 18, children will have rights to access information about their donors and any other children conceived by the same donors.

Please see our factsheet 'Children's rights when born through assisted conception' for more detailed information.

This guide contains information on current legal issues applicable at the time of printing. Note there may have been changes subsequently which have not been incorporated in to the material. This guide is intended for information purposes only and its content should not be applied to any particular set of facts or relied upon without legal or other professional advice. For further information please contact:

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