

Surrogacy law reform has been our passion at NGA Law and Brilliant Beginnings for more than 12 years. We were the first UK voice to call for surrogacy reform and we have contributed to many steps forward through our lobbying and litigation, including representing the first UK parents to get a parental order after international surrogacy in 2008, fighting for equal parenthood for same-sex couples in Parliament in 2010, running a successful campaign for maternity leave rights for intended parents in 2015 and winning a human rights court ruling which ended discrimination against single parents in 2019.

But while these have been steps in the right direction, the UK is on the verge of a truly giant leap. The Law Commission - an independent body which reviews outdated laws - was asked by the government last year to review UK surrogacy law and in June it published its provisional recommendations. These exciting proposals suggest a wholesale reform of the law on surrogacy, including:

adequately protect all involved, so that if UK parents have children born through international surrogacy in those countries they will be the legal parents from birth in the UK too

- Improvements to modernise and streamline the existing parental order and immigration processes, which will remain as a safety net for those families through surrogacy who fall outside the new automatic recognition pathways.

The recommendations are by no means a done deal - they are tentative suggestions which might yet be changed, and even once the proposals are finalised they will still need to be made law by Parliament. So there is a long way to go, and that is why we need those who support surrogacy or have been affected by it to respond positively, to give their support, to share their experiences and to help the Law Commission design workable law which will give Parliament confidence to enact it.

The issue most likely to be controversial is what the law should say about payments to UK surrogates. The Law Commission does not yet

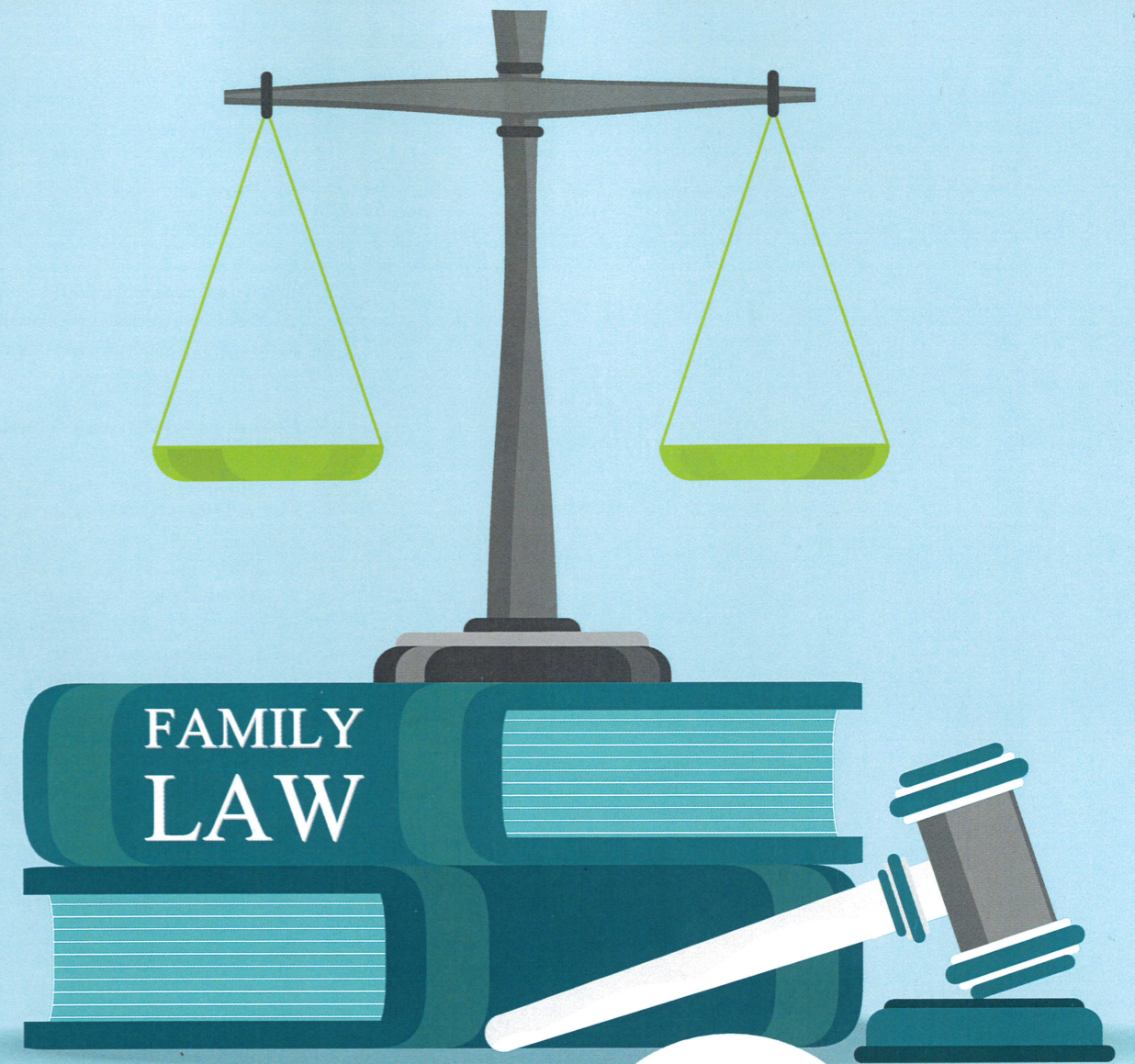
SURROGACY LAW REFORM - RESPOND TO THE LAW COMMISSION CONSULTATION BEFORE 11 OCTOBER

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- A proposed new 'pathway' for UK surrogacy arrangements which (provided there is a written agreement, screening, implications counselling, legal advice and the involvement of a regulated UK surrogacy organisation or fertility clinic) will recognise intended parents as the legal parents of their child from birth. In this new pathway, surrogacy agreements will not be contractually enforceable (other than in respect of the surrogate's expenses/compensation) since surrogates will retain a right to object for a short period after the birth, but the law will recognise the intended parents as the legal parents automatically in the overwhelming majority of cases where there is no dispute (and allow the family court to decide what happens if, rarely, there is a dispute)
- The creation of a national surrogacy register to preserve information for surrogate-born people about their genetic and gestational origins
- The Secretary of State given power to decide which other countries have surrogacy laws which

give a view on this but sets out different categories of payments to surrogates, and asks how the law could enforce any restrictions if there are limits. There is broad agreement that the current expenses framework is unclear, and in practice limits are not enforced since the family court always prioritises the child's best interests. The Law Commission looked at the court applications made between 2015 and 2019 and found a broad range of payments to surrogates in practice, from one family surrogacy in which the surrogate was paid expenses of £470 to the 10% of cases in which more than £20,000 was paid. 'Very few' parental order applications, they reported, contained a detailed itemised breakdown of the figure paid and frequently a round sum was agreed at the outset with no breakdown at all. The list of specific 'expenses' which were claimed also included compensatory items like flat fees for embryos transfers, multiple births and caesareans, post-birth holidays and gifts.

At Brilliant Beginnings, we take a pragmatic approach and think the law should reflect the



reality of how UK surrogacy works on the ground. We think the law must keep its current flexibility but with more transparency so as to avoid the murkiness that the current framework encourages. We do not think the rules should tighten up to reduce what UK surrogates already receive, and we are realistic that the law has no real power to limit what is paid between private individuals anyway. If a surrogate and her intended parents agree an element of compensation (which many currently do, and often as a lovely acknowledgment), we think the law should enable them to do so honestly and openly, rather than to fudge it or make payments under the table. The Law Commission is not proposing a commercial surrogacy model, with enforceable contracts and agencies which profit from arranging surrogacy and we see no need for that principle to be changed. But we think a more honest approach to compensation is both pragmatic and compatible with our altruistic surrogacy culture in the UK, particularly given that under the proposed new system proper safeguards will help make sure that no one is taken advantage of.

There is a broad consensus - certainly within the surrogacy community - about the need to change the law on parenthood to recognise intended parents as legal parents more quickly. At the moment, the surrogate and her spouse are always the child's legal parents and it takes 6-12 months to transfer legal parenthood to the intended parents via a parental order. This is not in anyone's interests - not the parents, the surrogate nor most importantly the child who is left in legal limbo in the care of parents who have no legal responsibility. In international surrogacy cases it results in children being stranded overseas for months after they are born, and there are many other issues, including difficulties over who can consent to medical treatment.

At the same time, the Law Commission wants to protect and balance the interests of all involved. That is why it proposes requiring those entering into surrogacy arrangements to take sensible steps to ensure they are fully informed and prepared for the process, including legal advice and counselling.

This will reduce the likelihood of rushed or ill-informed surrogacy arrangements, and protect against either side taking advantage of the other. For the same reason, the Law Commission recommends that third party intermediaries should be properly regulated and remain non-profit making, and that they should play a role in assessing the welfare of the child who may be born.

We would encourage you to respond to the Law Commission consultation, which closes on 11 October. The full consultation document is a meaty read, at 475 pages and 118 questions, and so we have made it easier for you. We have prepared a guide to responding to the consultation, with a short summary of the proposals, a plain English list of the questions by subject and some guidance on how to respond effectively. See brilliantbeginnings.co.uk/campaigning/law-commission-surrogacy-project You do not need to answer every question, but do take the time to share your experience and what matters to you.