

Summary of the Law Commission consultation questions: Surrogacy reform

The new pathway to parenthood (UK surrogacy only)		
Question	Topic	Chapter
7	The proposal for a new surrogacy pathway	8
11-13	The proposal for a surrogate's right to object and how this would work	8
14	The proposal for a lighter touch welfare of the child assessment	8
16-19	What happens if the child, surrogate or the intended parents die	8
20	Whether, as an alternative, there could be a temporary 3-parent model	8
21	Whether the new pathway should be overseen by a court/other body	8
27-29	Who should have parental responsibility (day to day decision-making authority) before the birth is registered	8
30-32	Whether and how traditional and independent surrogacy arrangements should/could be eligible for the new pathway	9
56	The proposal that intended parents are eligible if they are habitually resident in the UK (or UK domiciled)	12
58	Whether the intended parents should declare an intention for the child's home to be with them	12
64-65	Age requirements – proposing a minimum age of 18 for intended parents and surrogates, and asking whether there should be a maximum age for intended parents	12
66-69	The proposals for pre-conception medical screening, implications counselling, independent legal advice and criminal records checks	13
70-71	Whether surrogates should be required to have given birth before, the proposal there is no maximum number of surrogate births	13
112	Calls for evidence about the likely costs of medical screening, counselling, independent legal advice and the preparation of a surrogacy agreement	18
114	Calls for independent professionals who might be able to ratify an independent surrogacy arrangement to say what they would charge	18
International surrogacy arrangements		
Question	Topic	Chapter
89-90	Calls for overseas surrogates and children's rights organisations to share their experiences of international surrogacy	16
91, 93, 96	Evidence of parents' experience of bringing surrogate children home by applying for British nationality/UK passport (question 91) or a UK visa (question 93) or an EU UFF (question 96), and in each case ask how long it took and the causes of delays	16
92, 94, 96	The proposal that applications for a UK passport (question 92), UK visa (question 94) or EU UFF (question 95) can be started before birth to reduce post-birth delays	16
94	The proposal to formalise and simplify the existing visa process within the Immigration Rules	16

97	The proposal for a single comprehensive UK government guide on nationality and immigration	16
98-99	The proposal for the UK government to designate countries from which international surrogacy arrangements would be automatically recognised in the UK	16
100	Whether foreign intended parents undertake surrogacy in the UK, and if this should be restricted in any way	16
Payments to UK surrogates		
Question	Topic	Chapter
72	Whether any amounts which a UK surrogate can be paid should be based on an allowance or itemised (with or without receipts)	14-15
73	Essential pregnancy costs – whether these should be permitted and what should be included	14-15
74	Additional pregnancy costs – whether these should be permitted and what should be included	14-15
75	Surrogacy-specific pregnancy costs – whether these should be permitted and what should be included	14-15
76-77	Lost earnings – whether these should be permitted and what should be included (both actual lost earnings and lost earnings potential)	14-15
78	Benefits – call for evidence of the impact of payments on entitlement	14-15
79-80	Compensation for pain and inconvenience, medical procedures, complications and death – whether these should be permitted and how set	14-15
81	Gifts – whether these should be permitted and if so whether they should be modest or reasonable	14-15
82-83	Payment for services – whether this should be permitted, how set, impact on other expenses, and impact of miscarriage or termination	14-15
84	Whether any limits should be the same in the new pathway and the parental order process	14-15
85	Whether any other categories of payment should be considered	14-15
86	General question to prompt any further feedback about payments	14-15
87	How any limit of payments could be enforced in practice	14-15
Changes to parental orders (UK and international surrogacy)		
Question	Topic	Chapter
1-5	Parental order court procedure in England and Wales (allocation, directions orders)	6
15	The proposal to end the rule that a surrogate's spouse is a legal parent	8
19	What happens if both intended parents die before a parental order is made	8
20	Whether the law needs to deter one intended parent applying for a parental order as a single parent to the exclusion of the other	8
24	Whether to amend the welfare checklist the court considers before making a parental order	8
26	The proposal for intended parents to have parental responsibility (day to day decision-making authority) while they are applying for a parental order	8

54	The proposal to abolish the six month time limit for applying for a parental order	11
56	The proposal to allow intended parents to apply for a parental order if they are habitually resident in the UK but not UK domiciled	12
57	Whether there should be any changes to the relationship status requirements where two applicants apply together	12
64-65	The proposal for a minimum age of 18 for surrogates as well as intended parents (and no maximum age for either)	12
UK surrogacy agreements and surrogacy disputes		
Question	Topic	Chapter
24	Whether to amend the welfare checklist the court considers in a surrogacy dispute	8
25	Whether, if the surrogate keeps the baby, the intended parents should be able to apply for a child arrangements order without needing the court's leave	8
40	The proposal that UK surrogacy agreements remain unenforceable	9
55	The proposal for the court to be able to make a parental order without the surrogate's consent in certain circumstances	11
88	Whether, as an exception to this, surrogates should be able to enforce any financial terms	16
Regulation of UK surrogacy – advertising and third party professionals		
Question	Topic	Chapter
33-39	The proposal that UK surrogacy organisations should be 1) regulated by the HFEA and 2) non-profit	9
41	The proposal that professionals be able to charge for input into surrogacy agreements	9
42	The proposal to abolish the current ban on advertising	9
107	Calls for further information about best practice reform in healthcare	17
Information for surrogate-born people		
Question	Topic	Chapter
8	Whether surrogacy organisations should be legally required to keep records, and for how long	8
9-10	Whether anonymously-donated gametes should be prohibited/discouraged from use in UK surrogacy	8
43/46	Whether surrogate-born people should be able to access their pre-parental order birth certificate and court file	10
44	The proposal for birth certificates to record that a child was born through surrogacy	10
47-53	The proposal to create a national register of surrogacy, maintained by the HFEA, for surrogate-born people to be able to access information about their history	10
63	What information about the surrogate and gamete donors should be recorded	12
Double donation (UK and international surrogacy)		

Question	Topic	Chapter
59-60	The proposal to allow parents using donor eggs and sperm to use the new pathway. Whether parents without a genetic connection should be able to apply for a parental order (proposing this is not allowed in international surrogacy cases)	12
61	A specific situation where the intended parents separate and the non-biological parent wants to become the sole legal parent	12
62	Whether there should be a requirement for medical necessity if there is no genetic link	12
113	Calls for experience of the impact of the current requirement of a genetic link and the proposal to remove this	18
Employment law (UK and international surrogacy)		
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102	The proposal for an intended parent to get maternity allowance	17
103	Whether intended parents need more rights to time off work pre birth	17
104	Whether the law in relation to breastfeeding rights needs to be changed to accommodate parents through surrogacy	17
105	Whether there are any further employment law issues	17
Personal experience (UK and international surrogacy)		
Question	Topic	Chapter
109	Asks parents to say when their child was born, whether through international or UK surrogacy and their family structure	18
110	The experience of applying for a parental order	18
111	The impact of the current law not recognising intended parents as legal parents from birth	18
115	Whether any proposals will increase or restrict accessibility and why	18
116	How intended parents funded their surrogacy journeys	18
Scotland and Northern Ireland specific issues		
Question	Topic	Chapter
6	Parental order court procedure issues in Scotland	6
106	Whether Scottish succession law needs amending for surrogacy	18
117	Impact of the proposals in Northern Ireland	18
Mop up questions		
Question	Topic	Chapter
45	Whether other aspects of the English birth registration system should be reformed (not just in relation to surrogacy)	10
108	Whether there are any other legal issues not covered	18
118	Whether there are any other impact issues not covered	18