



Summary of the Law Commission surrogacy reform proposals

The Law Commission's provisional proposals on surrogacy law reform:

- propose three routes to becoming a legal parent if you have a child through surrogacy,
- recommend changes to the way surrogacy is regulated in the UK, and
- ask an open set of questions in relation to the issue of payments to UK surrogates.

The following is a brief summary of each of these proposals. You can read more in the Law Commission's [summary document](#) or in its [full consultation document](#).

Pathways to legal parenthood

Option 1: UK surrogacy arrangements within the new pathway

The Law Commission proposes a new 'pathway' for UK surrogacy. If the right steps have been followed before conception and the surrogate does not object after the birth, the intended parents will be the legal parents from birth and can be registered on their child's first birth certificate without a court application. The pathway requirements include that:

- Before conception, the surrogate and intended parents have put in place a written surrogacy agreement, obtained independent legal advice and had implications counselling
- The surrogacy agreement is ratified by a regulated surrogacy organisation or licensed fertility clinic, which must complete health, criminal records and welfare of the child screening on all involved and provide information to the new national surrogacy register (which the child will be able to access in the future)
- The surrogate does not exercise her right to object, which applies for 35 days post-birth in England and a slightly shorter period in Scotland

Option 2: UK surrogacy arrangements which fall outside the new pathway

Some UK surrogacy cases will not comply with the new pathway, including those which have not followed the pre-conception requirements, and those in which the surrogate has exercised her right to object after the birth. In those cases, the surrogate will be the legal mother of the child initially, but the intended parents will be able to apply for a parental order to become the legal parents.

To improve the current parental order system, the surrogate's spouse will no longer be a legal parent and the intended parents will share parental responsibility with the surrogate during the application process. The Law Commission is also asking about how to improve the court process and is proposing changing the parental order criteria so that:

- The family court can waive the surrogate's consent if doing so is in the child's best interests
- Parents can apply on the basis of habitual residence as well as domicile
- The six month time limit is abolished

Option 3: International surrogacy arrangements

The Secretary of State will have a power to designate countries (or states/provinces) from which surrogacy arrangements will be automatically recognised, if those countries have adequate safeguards to protect surrogates and children. UK parents with children born through surrogacy in those countries will be automatically recognised as legal parents in the UK and there will be no need for any further UK legal process.

UK parents whose child is born in a non-recognised state or country will, as now, be able to apply to the family court for a parental order after the birth. However, the Law Commission proposes improvements to the parental order criteria (as above) and the court process. It also recommends clearer guidance on nationality and immigration, and parents able to start applying for a visa or passport pre-birth to reduce the current long delays bringing children home.

Changes to the way UK surrogacy is regulated

As now, only non-profit surrogacy organisations will be allowed to provide surrogacy matching services in the UK (so the UK will still not allow commercially-arranged surrogacy). Surrogacy organisations will also now be required to be regulated by the HFEA.

Restrictions on advertising (which have never been enforced in practice) will be abolished, both for organisations and individuals. Lawyers and other professionals will be permitted to charge for helping with surrogacy agreements.

Surrogacy agreements will be enforceable in respect of surrogate expenses/compensation but not otherwise. If there is a dispute the family court will decide what is best for the child.

Payments to UK surrogates

Although the UK is often said to have an 'expenses only' framework, the consultation document shows that in practice there are no clear boundaries. Looking at court files from 2015 to 2019, the Law Commission found that there were 'very few' cases in which the parents had provided a detailed breakdown of expenses and 'frequent' cases where a round figure was pre-agreed by the parties without any breakdown at all (for example £15,000). Where payments were categorised, the Law Commission saw a broad range of payments claimed, including flat fee compensation for the inseminations/ embryo transfers/ multiple births etc, gifts, and post-birth holidays.

The Law Commission has not yet made any recommendations, and is asking for feedback as to:

1. Which of the following categories of payments should be permitted to UK surrogates – essential pregnancy costs, additional/optional pregnancy costs, surrogacy costs, lost earnings, lost benefits, compensation for pain, suffering and inconvenience, gifts, and payments for a surrogate's services.
2. If only certain categories are permitted, how any restrictions could be enforced. For parental orders, the Law Commission does not propose removing the family court's discretion to go outside the rules to 'authorise' payments retrospectively (as it does now). The discussion is therefore around how limits could be policed within the new pathway.