

A BRIEF GUIDE TO SURROGACY

Surrogacy is the term used to describe a situation where a woman agrees to become pregnant and have a baby for another couple. The woman who carries the baby is called the surrogate and the couple who intend to be the parents are called the intended parents. There are two ways in which surrogacy can be arranged:

Full/Host surrogacy where the intended parents use IVF treatment to create embryos from their own sperm and eggs and the embryos are replaced in the uterus of the surrogate in the hope that they will implant in order for her to become pregnant. In full/host surrogacy the intended parents are both the genetic parents of the resultant child.

Partial/Straight surrogacy where the surrogate's eggs are used with the intended father's sperm for IVF or IUI in a licensed clinic or when the woman becomes pregnant by self-insemination using the sperm of the intended father. In partial/straight surrogacy the intended father and the surrogate are the genetic parents but the intended mother is not.

In this Guide we are only providing information about surrogacy involving treatment in an HFEA licensed centre.

THE LEGAL ISSUES

There are two Acts of Parliament that regulate surrogacy - the Surrogacy Arrangements Act (1985) and Section 30 of the Human Fertilisation and Embryology Act (as amended 2008) each of which contains important information about what is legal or illegal when setting out to have a child via surrogacy.

Any agreement between a surrogate mother and intended parents is **not legally enforceable** and it is important to have a written surrogacy agreement, to make intentions clear and to provide evidence of intentions to the court in case a dispute arises.

The amended Human Fertilisation and Embryology Act contains new provisions relating to legal parenthood when donor sperm or embryos, created using donor sperm are used and these also affect people involved in surrogacy.

Significant points

1. The woman who gives birth to the baby is the legal mother when the child is born.
2. The woman and the man who are the intended parents have to be registered as Donors for medical screening purposes if their eggs and sperm are used to create embryos that will be placed in the surrogate to try and achieve a pregnancy.
3. If the surrogate is married her husband is automatically the legal father of the child or, if



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she has a Civil Partnership with another woman, that woman is automatically the second parent of the child.

4. If the surrogate has a male or female partner that person will not be the legal father or second parent of the child.
5. If the surrogate is single (not with a partner) and the embryos were created with the intended father's sperm, he can register as the child's father and be named on the Birth Certificate. Alternatively, the surrogate can choose to name the intended mother as the second parent but she must do this before the embryos are transferred/she conceives. In this situation the intended father would be the legal father as a result of his genetic relationship to the child but the intended mother would be named on the birth certificate as the 'second parent'.

THE FINANCIAL ISSUES

- It is illegal to advertise to find a surrogate or to be a surrogate.
- It is illegal for anyone to receive payment for his or her involvement in a surrogacy arrangement. Individuals or agencies can assist in making surrogacy arrangements as long as they receive no payment for their services.
- Only reasonable expenses occasioned by the pregnancy can be paid to the surrogate.

Great care is needed in keeping a record of all expenses. All expenses must be shown to be incurred as a result of undergoing treatment or by the pregnancy, for example maternity clothing, time off work, childcare, so as not to be seen as a commercial enterprise. Expenses must be justified to the courts as they can and will ask for proof if too high.

There are also additional protective measures to be borne in mind by intended parents such as life insurance for themselves and the surrogate. All parties are advised to have Wills made up to state what their wishes are in relation to the child in the event of their death.

BIRTH REGISTRATION

The surrogate registers the child's birth in the Register of Births and is named as the legal mother on the Birth Certificate. See 'significant points' above for further details.

PARENTAL ORDERS

In order for the intended parents to become the legal parents of the child they have to apply for a Parental Order, which is provided for in Section 30 of the Human Fertilisation & Embryology Act .

Application forms for Parental Orders are available from the Family Proceedings Court / Magistrate's Court or County Court in the intended parents' local area.

If the intended parents comply with the conditions of the Human Fertilisation and Embryology Act, set out below, the Court will appoint a Parental Order Reporter.

Legal conditions for parental orders

- The intended parents can be married, unmarried or in a civil partnership.
- The child has been carried by a woman other than the intended mother and must be genetically related to at least one of the intended parents;

- The surrogate and her husband/Civil Partner (if she has one) must freely and unconditionally consent to the making of the Order. Consent is not valid unless it is given 6 weeks after the child is born.
- Couples must apply for the Parental Order before the child reaches six months of age.
- No money, other than reasonable expenses, must have been paid in relation to the surrogacy arrangement, unless agreed by the court.
- At the time of the application and at the time of the Order the intended parents must be domiciled in the United Kingdom and the child must be living with the intended parents.

The Court will appoint a Parental Order Reporter, who visits all the parties and provides the Court with a report describing the circumstances of the surrogacy, commenting on the welfare of the child, (as set out in the Adoption Act 2002 and modified by the Parental Orders Regulations), and any arrangements for direct or indirect future contact.

Although rare, in some instances the Court may ask for a DNA test to prove the parentage of the child.

The Parental Order Reporter will need to satisfy the Court that the consent of the birth mother is freely given. The granting of the Order is dependant on the surrogate's consent.

When the Parental Order is granted the Registrar General will make an entry in a separate Parental Order Register to re-register the child. This will be cross-referenced with the original entry in the Register of Births. It will not be possible for the public to make a link between entries in the Register of Births and the Parental Order Register.

However once the child (who was the subject of the Parental Order) is 18 years old they are able to have a copy of the original birth certificate, but they must first be offered counselling.

The intended parents will receive a new birth certificate stating they are the legal mother and father of the child.

Up until the granting of the Parental Order by the Court, the surrogate can apply for a Residence Order to stop the Parental Order being made or seek the return of child. The intended parents can make a counter application.

INTERNATIONAL SURROGACY ARRANGEMENTS

Great care is needed in respect of surrogacy arrangements involving any kind of international element. It is strongly recommended all parties obtain legal advice before proceeding.

COUNSELLING

Anyone considering surrogacy will be aware that there are many emotional, social and ethical issues to be faced whether they are the surrogate, her husband/partner or the intended parents. For this reason at IVF Hammersmith we arrange for all those involved to see one of our counsellors. This ensures that everyone has access to full information about surrogacy and the opportunity to talk through its implications in the short and longer term. Your counsellor will also sign the necessary forms with you. These are essential for your future legal status in relation to the child.

The counsellors can be contacted directly on: 0203 313 8184.



WE STRONGLY RECOMMEND THAT YOU SEEK LEGAL ADVICE BEFORE PROCEEDING WITH TREATMENT INVOLVING A SURROGACY ARRANGEMENT

FURTHER INFORMATION

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Surrogacy UK is a not-for-profit organisation recognised by the Dept of Health, HFEA and BMA.

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