



SURROGACY UK'S GUIDANCE ON THE LAW COMMISSIONS' CONSULTATION ON SURROGACY LAW

INTRODUCTION

The Law Commissions have published their joint consultation paper on surrogacy reform and are actively seeking views on their provisional proposals to improve surrogacy laws so that they better support the child, surrogates and intended parents.

It's critical that the Law Commissions hear the views of people with personal experience of surrogacy so that we help shape future laws. This document aims to help you understand the key proposals and respond to the Law Commissions with your views.

The Law Commissions' key proposals:

There are 6 key proposals and 1 open question within the consultation. Click on the area you are interested to skip straight to that section:

- 1 *Creation of a new pathway that allows intended parents to be legal parents from birth*
- 2 *Specific requirements and safeguards that are mandated for entry into the new pathway*
- 3 *A regulator for surrogacy and regulated surrogacy organisations*
- 4 *Double donation (no genetic link to IPs required) permitted under the new pathway in domestic surrogacy*
- 5 *Creation of a national surrogacy register so those born through surrogacy can access information about their origins*
- 6 *The Law Commissions ask an open question about what kinds of payments should be allowed in surrogacy arrangements*
- 7 *For international surrogacy arrangements they propose reforms and guidance to make it easier to bring a surrogate child back to the UK*

The [full consultation paper](#) is an impressive 475 pages and contains 118 questions. For those of you who have time, please do grab a cup of tea or coffee, read the full document and respond to the full online form. However, we realise that most people won't be able to do this. We therefore asked the Law Commissions to produce a [Short Form Survey](#) which extracts the questions that are most relevant to those with personal experience of surrogacy. Please use this to respond to the Law Commissions' consultation paper.

1. CREATION OF A NEW PATHWAY THAT ALLOWS INTENDED PARENTS TO BE LEGAL PARENTS FROM BIRTH

Questions 1 to 8 in the [Short Form Survey](#) relate to the bundle of proposals that address the creation of a new pathway that allows intended parents to be legal parents from birth.

We have structured the information in two parts:

1. A summary of the Law Commissions' provisional proposals in this area
2. A synopsis of Surrogacy UK's emerging views on the provisional proposals to help spark discussion (please note these are provisional views that will evolve as we consult with our members and the surrogacy community)

SUMMARY OF THE LAW COMMISSIONS' PROVISIONAL PROPOSALS:

SUMMARY OF THE REFORM:	
The aim of the new pathway is to create a route through which the intended parents can become the legal parents of the child born through surrogacy from birth	
IPS CAN AUTOMATICALLY BECOME THE LEGAL PARENTS FROM BIRTH:	<ul style="list-style-type: none"> The proposal is for a new pathway, based on a rigorous pre-birth administrative process (incorporating key safeguards), which, if followed, automatically gives IPs legal parenthood at birth. Under the new pathway IPs will not need to apply for a Parental Order (providing the surrogate does not object to them becoming legal parents within a defined time period) and will be able to register the birth (without the surrogate being present) It is important to note that under the new pathway IPs cannot change their minds about being the legal parents of the child at birth IPs will be able to register the birth once the period for the surrogate to object has expired (see below) Although the surrogate is not a legal parent at birth, under the proposals she would share parental responsibility with the IPs until her right to object expires.
THE SURROGATE HAS A DEFINED TIME PERIOD WHERE SHE HAS THE RIGHT TO OBJECT TO THE IPS BECOMING LEGAL PARENTS:	<ul style="list-style-type: none"> In order to invoke her right to object, the surrogate must make her objection in writing to both the IPs and to any body responsible for the regulation of surrogacy arrangements The proposals account for a situation in which the surrogate lacks the capacity to consent during the period in which she may exercise her right to object (e.g. if she is unconscious). When IPs register the birth, they are required to make a statement that they have no reason to believe that the surrogate has lacked capacity at any time during this period



	<ul style="list-style-type: none">• If the surrogate invokes her right to object then the arrangement exits the new pathway and enters the Parental Order (PO) route, whereby the court will decide the permanent legal status of all parties• When the surrogate activates her right to object, she automatically becomes the legal parent of the child. The IPs automatically lose their status as legal parents and must apply for a PO. A court will decide the permanent legal status of all parties as part of the PO process• When the surrogate activates her right to object, she retains parental responsibility for the child during the period in which the PO process is underway. The IPs only retain parental responsibility (along with the surrogate) during this period if they are caring for the child. A court will decide the permanent legal status of all parties as part of the PO process
CHANGES TO THE CURRENT PARENTAL ORDER ROUTE:	<p>If IPs do not meet the requirements of the new pathway, they will follow the current PO route. Included in the consultation paper are proposals to improve the post-birth PO process. These include:</p> <ul style="list-style-type: none">• The court should be able to dispense with the surrogate’s consent if it is in the best interests of the child for the making of a PO. This means no one party would be able to veto the court’s decision. For this to happen, the case must fall into at least one of the following categories:<ul style="list-style-type: none">• The surrogate lacks capacity or cannot be found (these categories are already provided for in the existing law);• The child is living with or being cared for by the IPs with the surrogate’s consent; or• The court has decided that the child should live with the intended parents.• Under the proposed revisions to the PO route, IPs would automatically acquire parental responsibility at birth if the child is living with them and they intend to apply for a PO
THE SURROGATE’S CIVIL PARTNER OR SPOUSE WILL NOT BE A LEGAL PARENT OF THE CHILD:	<ul style="list-style-type: none">• Under the new pathway, it is proposed that the surrogate’s partner/spouse does not become a legal parent to the child. In the case of the parental order pathway they ask a question about whether this should be the case.• Under the new pathway the surrogate’s spouse/partner does not need to be a party to the surrogacy agreement but will need to comply with certain checks and safeguards (for example medical checks, an enhanced criminal records check and implications counselling) that are mandated within the process



SURROGACY UK'S EMERGING VIEWS ON THE PROVISIONAL PROPOSALS:

Please note these are provisional views that will evolve as we consult with our members and the surrogacy community.

LEGAL PARENTHOOD AND PARENTAL RESPONSIBILITY:	<p>Surrogacy UK has campaigned passionately for intended parents to be able to become legal parents at birth.</p> <p>Whilst we therefore whole heartedly support this reform, there are some practical details in the proposals that we think need to change. It should be noted that these are our initial thoughts and they may change over the course of the consultation period. We are conducting our own research with our members and the community before we finalise our position and submission to the consultation paper:</p> <ol style="list-style-type: none">1. Under the new pathway we feel that it's not appropriate for the surrogate to have a period of time where she has shared parental responsibility for the child. This does not tally with the feedback we've had from surrogates that says that they do not want to be treated as a parent at any point. They want the IPs to be recognised and treated as parents.2. In the new pathway, the consultation paper proposes that if the surrogate objects to the IPs becoming legal parents (within a defined time period) she automatically becomes the legal parent and the IPs lose this legal status. We do not believe that this is the right approach and we provisionally suggest that in this situation the IPs should remain legal parents until the case goes to court, where the permanent status and rights of all parties will be decided.3. We are interested in hearing your views on when you think the time period for the surrogate to object to the IPs becoming legal parents should end: should this be at birth?; or should this be for a fixed period after the birth as the consultation paper suggests?4. We are concerned that under the new proposals the IPs only have a small timeframe (one week) in which they would ideally register the birth
DISPUTED PARENTAL ORDER APPLICATIONS:	<p>We support proposals that would allow, in certain circumstances, a court to dispense with the surrogate's consent to the making of a parental order if it is deemed in the child's best interests to do so. We ask the Law Commission to ensure that the court has the ability to apply this change retrospectively on a case-by-case basis where it is overwhelmingly in the child's best interests to do so.</p>



**SURROGATE'S
SPOUSE/PARTNER:**

We support proposals that prevent the surrogate's civil partner or spouse being a legal parent in either the new pathway or the PO route.

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2. SPECIFIC REQUIREMENTS AND SAFEGUARDS THAT ARE MANDATED FOR ENTRY INTO THE NEW PATHWAY

Questions 9 to 16 in the [Short Form Survey](#) relate to the bundle of proposals that address the specific requirements and safeguards that are mandated for entry into the new pathway.

We have structured the information in two parts:

1. A summary of the Law Commissions' provisional proposals in this area
2. A synopsis of Surrogacy UK's emerging views on the provisional proposals to help spark discussion (please note these are provisional views that will evolve as we consult with our members and the surrogacy community)

SUMMARY OF THE LAW COMMISSIONS' PROVISIONAL PROPOSALS:

SUMMARY OF THE REFORM:

The process leading to the IPs acquiring legal parenthood will begin before the child is conceived. The process will include rigorous safeguards.

PROPOSED SAFEGUARDS IN THE NEW PATHWAY:

A rigorous pre-conception process, which incorporates safeguards, will need to be followed. It includes the following mandated activities. IPs will be required to evidence compliance with these for each arrangement under the new pathway:

- **Medical checks** for all (including surrogate's spouse/partner)
- **Independent legal advice:** the consultation paper proposes that both parties must take independent legal advice (on the legal implications of the agreement) in order to access the new pathway. In addition, the consultation paper proposes that lawyers should be able (although not required) to advise on the drafting of the agreement (thereby lifting the ban on this activity under the current legislation). Lawyers would therefore be able to charge for drafting or advising on agreements on a for-profit basis
- **Enhanced DBS checks** with a prescribed list of offences (related to risk/harm to the child) that bars parties from entering into a surrogacy arrangement in the new pathway
- **Implications counselling** for all (including surrogate's spouse/partner)
- **A written agreement** overseen by a regulated surrogacy organisation, clinic or lawyer. As part of the surrogacy agreement it is proposed that IPs declare that it is their intention that the child will live with them from birth. Please note it is proposed that the written agreement would remain unenforceable, except in relation to the financial terms of the agreement. It is proposed that the surrogate should be able to enforce the terms of the agreement relating to payment. This

	<p>would be dealt with completely separately from any disputes over legal parenthood.</p> <ul style="list-style-type: none"> • Assessment of the welfare of the child to be born would be made in the same way as for other assisted reproductive technologies, such as IVF, (see Chapter 8 of the HFEA current code of practice).
<p>WHO WOULD BE ELIGIBLE FOR THE NEW PATHWAY?</p>	<ul style="list-style-type: none"> • The new pathway would be available to those: pursuing domestic surrogacy arrangements; who are domiciled or habitually resident in the UK, Channel Islands or Isle of Man; and to both traditional and gestational surrogacy • The consultation paper contains a range of questions over who should be eligible for surrogacy. Amongst the most significant it asks: <ul style="list-style-type: none"> • Should a requirement be added to ensure surrogacy is being used out of medical necessity? Please note that the consultation paper suggests using a wide definition of medical necessity, which would include psychological and mental health reasons and consider the potential harm for any child born. This definition would not exclude (gay or single) men from being able to access surrogacy • Should there be a requirement that a surrogate has previously given birth in order to be part of the new pathway? • The consultation paper also asks whether independent arrangements could be brought within the new pathway and asks those with experience of independent arrangements to share their experiences, especially in relation to the safeguards undertaken
<p>REMOVING THE BAN ON ADVERTISING:</p>	<ul style="list-style-type: none"> • The consultation paper also proposes removing the ban on advertising as long as the content of what is advertised is lawful

SURROGACY UK'S EMERGING VIEWS ON THE PROVISIONAL PROPOSALS:

Please note these are provisional views that will evolve as we consult with our members and the surrogacy community.

<p>PROPOSED SAFEGUARDS IN THE NEW PATHWAY:</p>	<p>We are broadly supportive of the checks and safeguards that are formalised in the new pathway. We do not foresee a huge impact on surrogates or IPs that would pursue a surrogacy journey through a surrogacy organisation as the vast majority of these pre-requisites are already in place as part of “best practice” within the community. However, we question whether all of these checks and safeguards need to be mandated, especially the requirement for independent legal advice.</p>
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	<p>We also raise two concerns:</p> <ol style="list-style-type: none">1) Whether the increased costs, process and ‘interference’ of the new pathway would disincentivise people to use this pathway even with the benefit of at-birth legal parenthood. We are exploring how the Law Commissions/Regulator could encourage more people to use the new pathway rather than the Parental Order route2) We are cautious of creating disparity between IVF and other forms of assisted reproduction where many of these safeguards are not mandated in legislation. <p>We support the increased role of surrogacy agreements in the new pathway and would like to ensure that they are not reduced to a document that only checks understanding of the legal implications of surrogacy and eligibility to enter the new pathway. Surrogacy agreements should be the process by which all aspects of a surrogacy arrangement (including contact, diet, worst case scenarios etc) are discussed openly by the individuals and any areas of disagreement are identified. This requires a specific skill in facilitation/mediation coupled with a deep understanding of the full surrogacy experience of surrogacy teams.</p> <p>We agree that a surrogate should be able to enforce the financial terms of a surrogacy agreement and would like to explore this more with our members.</p>
CHILD FREE SURROGATES:	<p>We strongly support the inclusion of child-free surrogates within the new pathway and encourage surrogates who do not have children themselves to write to the Law Commission with their experiences.</p>
REMOVING THE BAN ON ADVERTISING:	<p>We recognise the arguments that support lifting a ban on advertising and we cautiously support this. We raise a concern that lifting the ban may increase the number of informal arrangements and ask the Law Commission to consider how it might prevent this risk being realised.</p>
MEDICAL NECESSITY FOR SURROGACY:	<p>We would like to hear more from our members on whether “medical necessity” should be added as a requirement for IPs pursuing surrogacy. We are wary of introducing a mismatch between the rules for surrogacy and other forms of assisted reproductive technologies such as IVF</p>

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3. A REGULATOR FOR SURROGACY AND REGULATED SURROGACY ORGANISATIONS

Questions 17 to 19 in the [Short Form Survey](#) relate to the bundle of proposals that address a regulator for surrogacy and regulated surrogacy organisations.

We have structured the information in two parts:

1. A summary of the Law Commissions’ provisional proposals in this area
2. A synopsis of Surrogacy UK’s emerging views on the provisional proposals to help spark discussion (please note these are provisional views that will evolve as we consult with our members and the surrogacy community)

SUMMARY OF THE LAW COMMISSIONS’ PROVISIONAL PROPOSALS:

SUMMARY OF THE REFORM:	
To support the creation of a new pathway the consultation paper suggests that greater regulation of surrogacy arrangements is needed in order to ensure compliance to the new safeguards	
REGULATED SURROGACY ORGANISATIONS:	<ul style="list-style-type: none"> • It is proposed that regulated surrogacy organisations will monitor compliance with the requirements of the new pathway. Clinics may also perform elements of this ‘monitoring for compliance’ role • Only regulated surrogacy organisations will be able to offer “matching and facilitation services” which could include activities such as: compiling information about potential surrogates and IPs; assisting the parties to match or team up to form surrogacy arrangements; and advising and supporting the parties throughout the surrogacy process
REGULATED SURROGACY ORGANISATIONS WOULD CONTINUE TO OPERATE AS NOT-FOR-PROFIT ENTITIES:	<ul style="list-style-type: none"> • Regulated surrogacy organisations should operate as non-profit making bodies. They will be able to charge for negotiating, facilitating and advising on surrogacy arrangements (currently prohibited) but under the restrictions of a not-for-profit structure
THE HFEA AS REGULATOR:	<ul style="list-style-type: none"> • It is proposed that the role of regulator in regards to surrogacy is undertaken by the Human Fertilisation and Embryology Authority

SURROGACY UK'S EMERGING VIEWS ON THE PROVISIONAL PROPOSALS:

Please note these are provisional views that will evolve as we consult with our members and the surrogacy community.

OUR VIEW:

This is an area where Surrogacy UK is reaching out to stakeholders from clinics, the HFEA and academia to seek their views on the practical implications around regulation. We are conducting several meetings over the next few weeks which will help us consolidate our thoughts. We are currently cautiously supportive of the proposal to regulate UK surrogacy organisations.

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4. DOUBLE DONATION (NO GENETIC LINK TO IPS REQUIRED) COULD BE PERMITTED UNDER THE NEW PATHWAY IN DOMESTIC SURROGACY

Question 20 in the [Short Form Survey](#) relate to the bundle of proposals that address double donation

We have structured the information in two parts:

1. A summary of the Law Commissions' provisional proposals in this area
2. A synopsis of Surrogacy UK's emerging views on the provisional proposals to help spark discussion (please note these are provisional views that will evolve as we consult with our members and the surrogacy community)

SUMMARY OF THE LAW COMMISSIONS' PROVISIONAL PROPOSALS:

SUMMARY OF THE REFORM:

The proposal by the Law Commissions is to remove the need for one of the IPs to have a genetic link to the child/children born through surrogacy where it is medically necessary. This would bring surrogacy law in line with other forms of assisted reproduction, such as IVF, which allows the use of fully donated embryos (or "double donation")

WHEN WOULD DOUBLE DONATION BE ALLOWED?:

- This option would only be available for those within the new pathway (domestic surrogacy arrangements who comply with the new pathway requirements)
- The Law Commissions ask if there should be a condition of 'medical necessity' introduced for those wishing to use double donation (NB this is not a requirement for those using fully donated gametes in IVF)
- The Law Commissions also ask whether the requirement for a genetic link should remain for those domestic surrogacy arrangements that follow the PO route
- The Law Commissions proposes that the requirement for at least one IP to have a genetic link to the child should be retained in international surrogacy arrangements

SURROGACY UK'S EMERGING VIEWS ON THE PROVISIONAL PROPOSALS:

Please note these are provisional views that will evolve as we consult with our members and the surrogacy community.

OUR VIEW:

Surrogacy UK has campaigned for the removal of the need for a genetic link in surrogacy so we are in support of this proposal.



We are interested in hearing from our members as to whether they support a requirement for “medical necessity” in order to be able to use double donation in surrogacy (this is not currently required for those using double donation in IVF)

For those using double donation under the Parental Order route, we are considering whether we think there should be a requirement to evidence that there was intention for surrogacy pre-conception. This would prevent people from being able to pass off an adoption as a surrogacy arrangement.

We agree that the restriction should remain for international arrangements in order to prevent child trafficking; however, consideration could be given for allowing this if it can be evidenced that the surrogacy agreement followed procedures and standards that are equivalent to those of the new pathway

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5. CREATION OF A NATIONAL SURROGACY REGISTER SO THOSE BORN THROUGH SURROGACY CAN ACCESS INFORMATION ABOUT THEIR ORIGINS

Questions 21 to 27 in the [Short Form Survey](#) relate to the bundle of proposals that address the creation of a national surrogacy arrangements register.

We have structured the information in two parts:

1. A summary of the Law Commissions' provisional proposals in this area
2. A synopsis of Surrogacy UK's emerging views on the provisional proposals to help spark discussion (please note these are provisional views that will evolve as we consult with our members and the surrogacy community)

SUMMARY OF THE LAW COMMISSIONS' PROVISIONAL PROPOSALS:

SUMMARY OF THE REFORM: The consultation paper makes a provisional proposal for the creation of a national register of surrogacy arrangements that would record key information in relation to each child born following a surrogacy arrangement	
BIRTH CERTIFICATES:	<ul style="list-style-type: none"> • The consultation document proposes that the full form (not short form) birth certificate should make clear that the birth was the result of a surrogacy arrangement. However, the current policy of the General Register Office now means that short form certificates are likely to be issued increasingly rarely. In light of that development the Commission will have to revisit the question of how, if at all, a birth certificate should state that the child was born as a result of a surrogacy arrangement
A NATIONAL REGISTER OF SURROGACY ARRANGEMENTS:	<ul style="list-style-type: none"> • The register would allow for surrogacy arrangements in both the new pathway and the PO route to be recorded • It would disclose information about origins in the context of a surrogacy birth including the identity of the IPs, the surrogate and any other gamete donors • Information about gamete donors would be the same as is recorded in the Register of Information maintained by the Authority • The register would apply to both traditional and gestational surrogacy arrangements. In traditional arrangements there would need to be medical verification of who provided the sperm
ACCESS TO THE REGISTER:	<ul style="list-style-type: none"> • The consultation document proposes that a child born through surrogacy should be able to access identifying information

	<p>from the age of 18 and non-identifying information from the age of 16. In order to access the information, they must be given a suitable opportunity to receive implications counselling</p> <ul style="list-style-type: none"> • The document asks if children under 16 or 18 should be able to access information if certain conditions are met e.g. their legal parents have consented • The Law Commissions ask if people who were carried by the same surrogate should be able to use the register to identify each other • They also ask if someone carried by a surrogate and the surrogate's child/children should be able to use the register to identify each other • Finally, the Law Commissions ask if, under the PO route, details of an intended parent who is not party to the PO should be recorded in the register
<p>A CHILD'S ACCESS TO COURT RECORDS:</p>	<ul style="list-style-type: none"> • The Law Commissions propose that, from the age of 18, those who have been subject to a PO, should be able to see all documents contained in the court's file, including witness statements made to support the parental order application.

SURROGACY UK'S EMERGING VIEWS ON THE PROVISIONAL PROPOSALS:

Please note these are provisional views that will evolve as we consult with our members and the surrogacy community.

<p>OUR VIEW:</p>	<p>Research suggests that children born through surrogacy and assisted reproduction have the best outcomes when parents are honest and confident with them about their origins from an early age. This is also supported by our own experience of surrogacy and the many families that we have supported. We are therefore supportive of these proposals by the Law Commissions. We feel that the types of information that could be disclosed and the process for doing this are appropriate.</p> <p>We are unsure whether all documents submitted to a court relating to a surrogacy arrangement should be disclosed to a person born through surrogacy. In particular, financial and medical records, which are personal to the surrogate and IPs, may not be appropriate for full disclosure.</p>
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6. THE LAW COMMISSION ASKS AN OPEN QUESTION ABOUT WHAT KINDS OF PAYMENTS SHOULD BE ALLOWED IN SURROGACY ARRANGEMENTS

Questions 28 to 40 in the [Short Form Survey](#) relate to the bundle of questions that ask about what kinds of payments should be allowed in surrogacy arrangements.

SUMMARY OF THE REFORM:

In order for the Law Commissions to analyse the responses to their open question they have created 8 categories of payments and asked for your views on each category. The categories are for their analysis only and are not necessarily to be used in any new legislation that may be drafted.

WHAT ARE THE CATEGORIES?

The 8 categories are as follows

- **Essential costs of pregnancy:** these include items that are completely unavoidable during pregnancy/birth such as maternity clothes, additional food and pregnancy supplements
- **Additional costs of pregnancy:** these include items that make a pregnancy more comfortable but (according to the consultation paper) are not essential, for example child care costs, domestic help and travel expenses outside of public transport
- **Costs associated with a surrogacy arrangement/pregnancy:** these are costs that are specific to surrogacy, for example the cost of meeting up or maintaining contact, the cost of meeting the requirements of the new pathway e.g. legal advice and implications counselling, the cost of making a will or the cost of a recuperative holiday for a surrogate and her family
- **Loss of earnings:** these payments reimburse the surrogate (whether she is employed or self-employed) for loss of earnings that are incurred as a result of pregnancy or birth and would cover the shortfall after any maternity payments or other benefits have been paid to the surrogate. As well as actual lost earnings. This category includes potential lost earnings, which the Law Commissions split into two buckets: 1) potential earnings e.g. lost overtime or commission payments/bonus. These should be calculable with a degree of certainty (for example evidenced by looking at the preceding year's income); 2) other lost potential earnings. These are speculative, for example potential lost new job opportunities. It proposes that only the first bucket should be permitted in this category and asks for your views
- **Loss of welfare entitlement:** this should only apply for means-tested benefits as other types of benefits have allowances for pregnancy/birth. The category recognises that the types of expenses that are deductible under social security law are more narrowly defined than the current surrogacy law allows,



	<p>meaning that surrogates may experience a reduction in their benefits due to payments that would be considered as expenses under surrogacy law but not under social security law. The consultation paper argues that these types of costs could be treated in the same way as lost income and could therefore be covered by IPs</p> <ul style="list-style-type: none">• Gifts: the consultation paper asks whether only modest gifts should be allowed within this category e.g. a modest piece of jewellery or keepsake. It asks, if allowed, should this category be capped or freely negotiated between the parties• Compensation for the pain and inconvenience of being a surrogate: this category does not refer to actual lost income that may result from pregnancy or birth related complications or procedures. Instead, it captures payments that would be made to compensate for the fact that a pregnancy, procedure or complication has occurred (or may occur), for example a payment for each insemination, or in the event of a miscarriage or termination. The consultation paper asks, if allowed, should this category be capped or freely negotiated between the parties• Payment for being a surrogate: this category refers to payment made to a woman for her service as a surrogate i.e. her gestational service. It would not be a payment for the child and would not be conditional on the 'hand-over' of the baby or on a live birth. The consultation paper asks, if allowed, should this category be a capped fee set by the regulator or freely negotiated between the parties
ENFORCEABILITY:	<ul style="list-style-type: none">• The consultation paper proposes that the types of payment allowed should be the same under both the new pathway and the PO route and asks for your views• However, it also suggests that if IPs/surrogates do not comply with the limitations on payments then they would fall out of the new pathway and have to follow the PO route• It proposes that IPs or surrogates who do not comply should not be criminalised• The consultation paper suggests that the surrogate should be able to enforce the financial terms of a surrogacy arrangement and that her ability to do so should not be dependent on her complying to any terms that relate to her lifestyle
HOW PAYMENTS COULD BE MADE:	<ul style="list-style-type: none">• The consultation paper asks how payments should be made to a surrogate and if receipts should be provided• The consultation paper asks if payments should be reduced in the event of a miscarriage or termination

SURROGACY UK'S EMERGING VIEWS ON THE PROVISIONAL PROPOSALS:

Please note these are provisional views that will evolve as we consult with our members and the surrogacy community

TYPES OF PAYMENTS THAT SHOULD BE ALLOWED:

Our research suggests that the majority of surrogates and IPs undertaking surrogacy in this country do not support a move towards a commercial model (one that enables surrogates to profit from surrogacy). In fact, many surrogates have spoken to us about the potential stigma that they would face under a system that permits surrogates to charge for their gestational services (even if they themselves chose not to).

We have also spoken to IPs who are concerned over the impact a commercial system would have on affordability and access to surrogacy. Sadly, surrogacy already has a significant financial burden on IPs and we would hate to see costs increase further.

Finally, we believe that legislation has a direct impact on the culture, values and practice of surrogacy in a particular jurisdiction. In the UK we have much to be proud of when it comes to surrogacy. For many of us surrogacy represents the very best of values: friendship; empathy; mutual respect; trust; teamwork; and altruism. Much of this culture stems from a law that was set up with the explicit intention of preventing commercial payments and organisations. This has nurtured a specific mindset around UK surrogacy that we want to protect.

With this in mind we do NOT support the following categories of payments:

- **Compensation for the pain and inconvenience of being a surrogate:** Any actual costs that a surrogate incurs as a result of trying to conceive, being pregnant or giving birth, or from a medical procedure or complication, should be covered in their expenses. We do not believe that a payment should be made for reaching a specific stage of a surrogate pregnancy, or for the fact that a procedure or complication has taken place, as this is akin to a payment for the service of being a surrogate and does not represent the repayment of an actual expense incurred by the surrogate
- **Payment for being a surrogate:** for the reasons stated above Surrogacy UK does not support this category of payment

In addition to the points above, we believe there may be some expenses that have been overlooked in the categories, for example the surrogate's partner's time off work. We would love to hear your views on what other expenses might not have been considered



ENFORCEABILITY:	<ul style="list-style-type: none">• We think that in the case of a breach of the limitations on payments the arrangement should exit the new pathway and enter the PO route (where excessive payments would be dealt with in a similar way to that which currently exists)• We think that IPs and surrogates in the new pathway should sign a sworn statement to say that they have not paid, and do not intend to pay, more than the amount declared in their surrogacy agreement. Any breach of this would be dealt with as a contempt of court• We agree that a surrogate should be able to enforce the financial terms of a surrogacy agreement in line with the proposals in the consultation paper
PAYMENTS:	<ul style="list-style-type: none">• We would like to see a comparison of estimated versus actual expenses at a certain time period after the birth/end of pregnancy so that any discrepancy can be rectified by either party• We believe that the surrogate should keep a record of expenses incurred. Where possible receipts should be kept (for a certain period of time post the end of a pregnancy); however, receipts should not be mandated as this would be overly burdensome on the surrogate
YOUR VIEWS:	<ul style="list-style-type: none">• This is an area where we are particularly keen to hear your views so that we can continue to evolve and reconsider our position. Join our Facebook page to join in the discussion.

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7. FOR INTERNATIONAL SURROGACY ARRANGEMENTS THE LAW COMMISSION PROPOSES REFORM AND GUIDANCE TO MAKE IT EASIER TO BRING A SURROGATE CHILD BACK TO THE UK

Questions 14 to 46 in the [Short Form Survey](#) relate to the bundle of proposals that address international surrogacy arrangements.

We have structured the information in two parts:

1. A summary of the Law Commissions' provisional proposals in this area
2. A synopsis of Surrogacy UK's emerging views on the provisional proposals to help spark discussion (please note these are provisional views that will evolve as we consult with our members and the surrogacy community)

SUMMARY OF THE LAW COMMISSIONS' PROVISIONAL PROPOSALS:

SUMMARY OF THE REFORM:

It is thought that international surrogacy arrangements may count for up to half of surrogacy arrangements entered into by UK-based IPs. The proposals in this section look to improve the way that these arrangements work

WHAT ARE THE PROPOSALS?

Chapter 16 of the consultation paper looks at international surrogacy arrangements. It looks at three key areas:

- **Nationality:** the proposal aims to streamline and shorten the process that allows a child to obtain a passport by proposing that this process could begin before the child is born
- **Immigration:** the consultation paper provisionally proposes that the application process for a visa could begin before a child is born. It also proposes that the immigration route that exists outside the Immigration Rules be brought within the Rules.
- **Legal Parenthood:** the consultation paper provisionally proposes that the law should provide the ability to recognise the status of legal parenthood acquired by the IPs in other countries automatically, without the need to apply for a PO in this country. This would be on a country-by-country basis, based on whether the laws and practices of the country in question provide adequate protection for the welfare of the child and against exploitation of the surrogate proposes that the government provide a comprehensive guide for IPs looking to have a child through surrogacy overseas about the nationality and immigration consequences of doing so.



SURROGACY UK'S EMERGING VIEWS ON THE PROVISIONAL PROPOSALS:

Please note these are provisional views that will evolve as we consult with our members and the surrogacy community.

OUR VIEW:

Surrogacy UK deals solely with UK surrogacy. We welcome proposals that prioritise the welfare of children, protect the rights of surrogates and protect IPs who are looking to create their family overseas.

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FURTHER RESOURCES

- [About the Law Commission's project on surrogacy and links to their documents](#)
- [About the SUK Working Group on Surrogacy Law Reform](#)
- [About SUK](#)

