

SurrogacyUK believes that the law on surrogacy in the UK should be reformed

The existing laws governing surrogacy arrangements in the UK are widely recognised by legal practitioners, the judiciary, academics, policymakers and those in the non-profit surrogacy sector as being out of date and in need of reform. The current situation makes it harder to serve the best interests of children, families and surrogates. We are seeking the support of parliamentarians to influence the government to urgently enact the law reforms proposed by the Law Commissions in 2023.

What is surrogacy?

Surrogacy is the practice whereby a person (the **surrogate**) carries a baby for another person or couple (the **intended parent/s**), with the shared intention that the child will be raised by the intended parents. There are two types of surrogacy:

- In **gestational surrogacy** (also known as full/host/IVF/high-tech surrogacy), an embryo created through *in vitro* fertilisation (**IVF**) is transferred to the surrogate's uterus; the surrogate typically has no genetic connection to the child.
- In **traditional surrogacy** (also known as genetic/partial/straight/low-tech surrogacy), the surrogate uses her own egg and is genetically related to the resulting child.

The intended parents may be a heterosexual couple who cannot carry a pregnancy (often following cancer, repeated miscarriages, unexplained infertility or the mother having been born without a womb), a same-sex couple or, more rarely, a single person.

Surrogacy is an accepted form of family building in the UK, as the [world-leading guidance for parents, surrogates and health professionals](#) published by the Department for Health and Social Care (DHSC) shows. The UK's non-commercial approach to surrogacy is also aligned with the [recommendations on ethical considerations of surrogacy recently published by the European Society of Human Reproduction and Embryology \(ESHRE\)](#). Though increasing in use, it is not a common way to have children: in 2023, the most recent data available, there were 513 parental orders granted following births by surrogacy.

Most surrogacy arrangements undertaken in the UK proceed smoothly, especially when supported by one of the DHSC-named non-profit support organisations, such as SurrogacyUK. However, the legal framework has not kept up with social changes, leaving surrogates, intended parents and those who seek to support them frustrated by laws that do not appear to serve their best interests or those of children born through surrogacy. **It is time to reform the law.**

What does the current law say?

Surrogacy has been regulated since the **Surrogacy Arrangements Act 1985**. This Act:

- Criminalises for-profit surrogacy agencies or brokers (so prohibits commercial surrogacy while allowing 'altruistic' surrogacy arrangements).
- Makes advertising for or as a surrogate illegal.
- Renders all surrogacy arrangements unenforceable.

In addition, the **Human Fertilisation and Embryology (HFE) Act 1990/2008**:

- Says the woman who gives birth 'and no other woman' is the legal mother.
- Determines that if the surrogate is married/in a civil partnership her spouse/partner is the legal father/second legal parent.
- Created '**parental orders**' which, when certain conditions are met post-birth, enables the court to transfer legal parenthood from the birth parents to the intended parents.

It is a common misconception that payments to surrogates are illegal. UK law does not make it illegal to pay a surrogate (only for profit-making third parties to charge for their services), although any payments must be considered by family court after the birth in the context of making a parental order. UK surrogates are typically paid around £12,000 to £15,000 as reimbursed 'expenses' connected to the pregnancy.

Problems with the law

“Regardless of the range of views surrogacy attracts, it is clear that the current law does not work in the best interests of any of the people involved: children born through surrogacy, women who become surrogates, or intended parents.”

- Law Commission & Scottish Law Commission: [Building Families Through Surrogacy: A New Law \(2023\)](#)

The existing law is widely recognised by legal practitioners, the judiciary, academics, policymakers and those in the non-profit surrogacy sector as being out of date and in need of reform. It does not serve the best interests of children, families or surrogates. In part this is because there is perceived to be little incentive for intended parents to pursue surrogacy in the UK, including a lack of certainty that the agreement will succeed, or fear that the courts will not grant a parental order if the parties get something 'wrong'. This can sometimes drive intended parents to pursue surrogacy overseas, usually in a country where commercial surrogacy is practised.

While there are some overseas surrogacy destinations that do so ethically (such as much of the US), this comes at considerable expense and is not without complications. Practice in some other destinations – often unregulated – can raise questions about ethics, including about exploitation of women as surrogates and exploitation of intended parents' desire for a family.

Many of the parental order requirements have been interpreted by the Family Court to allow decisions to conform with Human Rights legislation. As one example, the provision that says applications must be made within six months of a child's birth has become completely untenable. As the Courts' primary obligation is to ensure the lifelong welfare of the child, many of the requirements have become largely meaningless.

Potential law reform

Following campaigns to change the law led by SurrogacyUK and others, a [comprehensive review and public consultation](#) was undertaken by the Law Commission of England and Wales and the Scottish Law Commission. The **Law Commissions' joint final report 'Building Families Through Surrogacy: A New Law'** was published alongside a [draft new Surrogacy Bill](#) in 2023.

The key reform proposals include:

- A new **pathway to legal parenthood** for domestic surrogacy arrangements that will allow intended parents to be legal parents from birth, where at least one of them is the genetic parent and the arrangement is overseen by a **regulated surrogacy organisation**.
- Requirements and **safeguards** for the new pathway to ensure that surrogacy is the right decision for the surrogate and intended parents, and that the welfare of the child born is protected.
- Reforms of payments that intended parents can make to surrogates, to provide clarity, transparency and effective means of enforcing limitations, and to guard against exploitation.
- A **regulator** for surrogacy and regulated non-profit surrogacy organisations.
- Reforms to the parental order process, which will still be required for surrogacy agreements that do not meet the pathway requirements (including international arrangements).
- The creation of a new Surrogacy Register to allow those born of surrogacy agreements to access information about their origins.
- Improved employment rights for intended parents.

Lived experiences of surrogates and parents

"Surrogacy has enhanced both my and my family's lives. As a surrogate, I've been able to help a couple become a family which has been so amazing. My whole family has gained so much from our relationship and experienced so much joy!" - Surrogate

"Welcoming our baby boy in Oct 2024 after a long 10 year journey has given us our entire dream come true. Surrogacy allowed us to complete our family in the safest and most inclusive way possible, and gave us a chance to become parents which so many others deemed impossible on our behalf." - Parent through surrogacy

"In February we celebrated our son's second birthday. We can't believe how fast he's grown! He was born to us after a decade-long struggle with infertility - several surgeries, failed IVF and miscarriages - thanks to our amazing friend, the support of Surrogacy UK, and the UK's unique altruistic model for surrogacy. Our experience has been grounded in true friendship - our surrogate will be our lifelong friend and always a special Auntie to our son, and her husband and children are so important to us. They were all at our son's birthday celebrations and they have met our families and other friends several times." - Parent through surrogacy

"I believe intended parents should be able to go on the birth certificate straight-away and no need to go to court for a parental order" - Surrogate

"It is absolutely ridiculous that my husband had to be named on the birth certificate. I would like this to be entirely reviewed and changed." - Surrogate

"After 6 years of significant fertility trauma (multiple natural losses, multiple rounds of IVF), my son was born via surrogacy in the US. Surrogacy is the only chance we had to become parents. I am a US/UK dual citizen and my partner is a UK citizen. Our son was born via surrogacy in the US because the UK law grants me zero rights as a mother. We are currently going through the process to obtain our parental order. I suffer from anxiety and PTSD because of the fertility trauma I experienced, and bringing my son home to the UK knowing this country does not view me as his mother is further salt in the wound. The additional time and money we have to spend obtaining a parental order is a waste of resources. This child was so desperately wanted and is so loved, the government would be much better placed spending time and money on the children in this country who are in care or who have other health needs. Don't punish families who require alternative paths to parenthood. Surrogacy is a beautiful experience and when all parties are participating of their own free will, the government should not punish them. Allow pre birth parent orders to be granted." - Parent through surrogacy

"It was deeply uncomfortable to watch our surrogate (and her husband!) be named as the legal parents on the birth registration, none of us wanted that. We are just thankful that nothing terrible happened in terms of our son's health during the 6 months it took for us to receive our parental order, because our surrogate would have had to give her permission for any medical treatment he received, even though he does not live with her and has been with us since the moment he was born." - Parent through surrogacy

"It was upsetting to have to receive a visit from Cafcass as part of the parental order process to effectively assess our suitability as parents, and it made no sense to the Cafcass officer either." - Parent through surrogacy

"The whole parental order process is a huge waste of the precious time of family courts. The court officers were delighted to grant our PO and to see us all happily together on our court day with our surrogate, her husband and their children alongside us, but the court system is over-stretched and they have serious problems to deal with in terms of family breakdowns, custody battles etc. It is a no-brainer that intended parents should be the legal parents from birth, since this is the whole point and the agreed outcome that all parties want." - Parent through surrogacy