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Surrogacy reforms to improve the law for all

The laws around surrogacy are outdated and should be improved to better support the child, surrogates and intended parents, the Law Commission of England and Wales and the Scottish Law Commission have announced today (06 June 2019).

Surrogacy is where a woman bears a child on behalf of someone else or a couple, who then intend to become the child's parents (the intended parents). Surrogacy is legal in the UK, and is recognised by the Government as a legitimate form of building a family.

However, change is needed to make sure the law works for everyone involved. To reflect the wishes of surrogates and intended parents, the Law Commissions are proposing to allow intended parents to become legal parents when the child is born, subject to the surrogate retaining a right to object for a short period after the birth.

This would replace the current system where the intended parents must make an application to the court after the child has been born, and do not become legal parents until the court grants them a parental order. The process can take many months to complete.

This proposal for the creation of a new surrogacy process or "pathway" is one of several that the Law Commissions are now consulting on which aim to bring greater certainty, put the child at the heart of the process and provide comfort and confidence to both the surrogate and the intended parents. Other proposals include:

- The creation of a surrogacy regulator to regulate surrogacy organisations which will oversee surrogacy agreements within the new pathway.
- In the new pathway, the removal of the requirement of a genetic link between the intended parents and the child, where medically necessary.
- The creation of a national register to allow those born of surrogacy arrangements to access information about their origins.

The Law Commissions also ask a number of questions to open the debate on the important topic of the payments that intended parents should be able to make to the surrogate, while provisionally proposing that surrogacy organisations should remain non-profit.

Sir Nicholas Green, Chair of the Law Commission said:

"More and more people are turning to surrogacy to have a child and start their family. We therefore need to make sure that the process is meeting the needs of all those involved.

"However, the laws around surrogacy are outdated and no longer fit for purpose. We think our proposals will create a system that works for the surrogates, the parents and, most importantly, the child."

Lady Paton, Chair of the Scottish Law Commission said:

"Surrogacy has become a significant issue in today's society. The interests of all the parties involved must be properly regulated and protected. That is the focus of our proposals."

Dustin Lance Black, surrogate father and campaigner said:

“Without our wonderful surrogate and clear surrogacy law, we would not have been able to have our first child or begin building the family we’ve always wanted.”

“Good, clear law helps people make stronger, clearer decisions. Solid, definitive surrogacy law in the UK will have the power to keep surrogates, egg donors, intended parents, children, and families safe. This consultation is vital for ensuring the UK succeeds in building the best surrogacy law in the world. I hope as many people as possible can get involved and respond.”

The current system: Not fit for purpose

More and more people are turning to surrogacy to start a family, yet the laws governing surrogacy came into effect in the mid-1980s and need updating.

Currently, intended parents have to wait until the child has been born and then apply to court to become the child’s parents. The process can take many months to complete. This process doesn’t reflect the reality of the child’s family life, and affects the intended parents’ ability to take decisions about the child in their care.

Insufficient regulation makes it difficult to monitor the surrogacy process and those involved in it and ensure that standards throughout the process are kept high. There is also a lack of clarity around surrogacy payments. The law currently permits intended parents to pay ‘reasonable expenses’ to the surrogate, however this is unclear and difficult to apply in practice.

The new pathway to parenthood

The Commissions’ proposals for a new pathway for domestic surrogacies would overcome many of these concerns by allowing intended parents to become the child’s legal parents at birth. This would be balanced with the rights of the surrogate who would have a short period to object to the intended parents becoming legal parents at birth.

The new process would also require safeguards – such as counselling and independent legal advice – for those entering into the surrogacy arrangement. These would reduce the risk of the arrangement breaking down which can cause great distress for all involved.

A surrogacy regulator and regulated surrogacy organisations would oversee these arrangements and ensure standards can be monitored and kept high.

For surrogacy arrangements that do not qualify for this new regulated process, the Law Commissions are also proposing amendments to improve regulation of the existing parental order route which will make the law clearer, easier to apply and more cost-effective.

Surrogacy payments

At this point, the Commissions are not putting forward any proposals around payments to the surrogate. However, as part of the consultation, the Commissions want to understand public views on surrogacy payments. The consultation therefore includes questions around the categories of



payment that the intended parents should be able to pay to the surrogate, to seek a consensus on this issue.

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Next steps

The Law Commissions' consultation closes on 27 September 2019. To find out more, including how to respond, please go to: <https://www.lawcom.gov.uk/project/surrogacy/>

The full consultation paper, and a summary paper can also be found here:
<https://www.lawcom.gov.uk/project/surrogacy/>

Notes for editors

For all media queries, including access to the embargoed consultation paper or summary, or to arrange an interview with Professor Nicholas Hopkins, the Family Law Commissioner at the Law Commission of England and Wales, please speak to Dan Popescu on:

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