Short Form Questionnaire: Law Commissions’ Surrogacy Consultation



This form is an extract of the longer form for comments and responses to the Law Commission’s and the Scottish Law Commission’s consultation about reforming surrogacy law. If you would like to respond to the full version of our consultation questionnaire, please use the online form: <https://consult.justice.gov.uk/law-commission/surrogacy>. Please see our websites for further details, and for links to download the full consultation paper: <https://www.lawcom.gov.uk/project/surrogacy/> and <https://www.scotlawcom.gov.uk/law-reform/law-reform-projects/joint-projects/surrogacy/>.

We have selected 46 questions which may be of particular interest of **those with lived experience of surrogacy arrangements**: surrogates, intended parents, family members and adult children born of surrogacy arrangements. You do not need to answer all the questions if you do not want to, and you can write as much or as little as you would like in response to our questions.

**Please note that we may publish or disclose information you provide us in response to this consultation, including personal information. We ask consultees, when providing their responses, if they could avoid including personal identifying information in the text of their response, particularly where this may reveal the identities of other people involved in their surrogacy arrangement.**

For more information about how we consult and how we may use responses to the consultation, please see [page i – ii of the Consultation Paper](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/06/Surrogacy-consultation-paper.pdf).

HOW TO SUBMIT YOUR RESPONSE USING THIS QUESTIONNAIRE

Type your response into the text fields below and then save your completed form. When you have completed your response, email the completed form as an attachment to surrogacy@lawcommission.gov.uk.

**The closing date for submitting a response to our consultation is 11 October 2019.**

QUESTIONS ABOUT YOU

What is your name? Click or tap here to enter text.

If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation? Click or tap here to enter text.

Are you responding to this consultation in a personal capacity or on behalf of your organisation?

Click or tap here to enter text.

If responding to this consultation in a personal capacity, which term below best describes you?

Choose an item.

What is your email address?

Click or tap here to enter text.

What is your telephone number?

Click or tap here to enter text.

If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our [privacy notice](https://www.lawcom.gov.uk/document/handling-personal-data/), we take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Click or tap here to enter text.

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| **Question No.** | **Consultation Question** |
| **Q1** | Consultation Question 7.In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:(1)          entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,(2)          complied with procedural safeguards for the agreement, and(3)          met eligibility requirements,on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate’s right to object.Do consultees agree? |
| Your Response to Q1 | Click or tap here to enter text. |
| **Q2** | Consultation Question 11.We provisionally propose that:(1)          the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;(2)          this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and(3)          the defined period should be the applicable period for birth registration less one week.Do consultees agree? |
| Your Response to Q2 | Click or tap here to enter text. |
| **Q3** | Consultation Question 12.We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:* + 1. the surrogate will be the legal parent of the child;
		2. if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
		3. the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree? |
| Your Response to Q3 | Click or tap here to enter text. |
| **Q4** | Consultation Question 15.We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents’ acquisition of legal parenthood at birth, the surrogate’s spouse or civil partner, if any, should not be a legal parent of the child.Do consultees agree?We invite consultees’ views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate’s spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement. |
| Your Response to Q4 | Click or tap here to enter text. |
| **Q5** | Consultation Question 27.We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:* + 1. the intended parents should acquire parental responsibility on the birth of the child; and
		2. if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree? |
| Your Response to Q5 | Click or tap here to enter text. |
| **Q6** | Consultation Question 28.We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.Do consultees agree? |
| Your Response to Q6 | Click or tap here to enter text. |
| **Q7** | Consultation Question 29.For all surrogacy arrangements, we invite consultees’ views as to: * + 1. whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and
		2. whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.
 |
| Your Response to Q7 | Click or tap here to enter text. |
| **Q8** | Consultation Question 55.We provisionally propose that:* + 1. the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;
		2. the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
			1. where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
			2. following a determination by the court that the child should live with the intended parents; and
		3. the court’s power to dispense with consent should be subject to the paramount consideration of the child’s welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree? |
| Your Response to Q8 | Click or tap here to enter text. |
| **Q9** | Consultation Question 30.We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.Do consultees agree? |
| Your Response to Q9 | Click or tap here to enter text. |
| **Q10** | Consultation Question 32.We invite consultees’ views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.We invite consultees’ views as to how independent surrogacy arrangements might be brought within the scope of the new pathway. |
| Your Response to Q10 | Click or tap here to enter text. |
| **Q11** | Consultation Question 67.We provisionally propose that, as a condition of being eligible for entry into the new pathway:* + 1. the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
		2. the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree? |
| Your Response to Q11 | Click or tap here to enter text. |
| **Q12** | Consultation Question 68.We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.Do consultees agree? |
| Your Response to Q12 | Click or tap here to enter text. |
| **Q13** | Consultation Question 88.We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.Do consultees agree?We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.Do consultees agree? |
| Your Response to Q13 | Click or tap here to enter text. |
| **Q14** | Consultation Question 42.We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.Do consultees agree? |
| Your Response to Q14 | Click or tap here to enter text. |
| **Q15** | Consultation Question 62.We invite consultees’ views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:* + 1. for cases under the new pathway to parenthood; and/or
		2. for cases where a post-birth parental order application is made.

We invite consultees’ views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed. |
| Your Response to Q15 | Click or tap here to enter text. |
| **Q16** | Consultation Question 70.We invite consultees’ views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway. |
| Your Response to Q16 | Click or tap here to enter text. |
| **Q17** | Consultation Question 33.We provisionally propose that:* + 1. there should be regulated surrogacy organisations;
		2. there should be no requirement for a regulated surrogacy organisation to take a particular form; and
		3. each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree? |
| Your Response to Q17 | Click or tap here to enter text. |
| **Q18** | Consultation Question 35.We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.Do consultees agree? |
| Your Response to Q18 | Click or tap here to enter text. |
| **Q19** | Consultation Question 37.We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.Do consultees agree?We invite consultees’ views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway. |
| Your Response to Q19 | Click or tap here to enter text. |
| **Q20** | Consultation Question 59.We provisionally propose that the new pathway – * + 1. should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
		2. that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?We invite consultees’ views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements. We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.Do consultees agree? |
| Your Response to Q20 | Click or tap here to enter text. |
| **Q21** | Consultation Question 46.We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court’s file for those parental order proceedings.Do consultees agree? |
| Your Response to Q21 | Click or tap here to enter text. |
| **Q22** | Consultation Question 47.We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.Do consultees agree?We provisionally propose that:* + 1. the register should be maintained by the Authority;
		2. the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
			1. identifying information about all the parties to the surrogacy arrangement, and
			2. non-identifying information about those who have contributed gametes to the conception of the child; and
		3. to facilitate the record of this information, the application form/petition for a parental order should record full information about a child’s genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree? |
| Your Response to Q22 | Click or tap here to enter text. |
| **Q23** | Consultation Question 48.We invite consultees’ views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement. |
| Your Response to Q23 | Click or tap here to enter text. |
| **Q24** | Consultation Question 49.We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.Do consultees agree?We invite consultees’ views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:* + 1. where his or her legal parents have consented;
		2. if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
		3. in any other circumstances.
 |
| Your Response to Q24 | Click or tap here to enter text. |
| **Q25** | Consultation Question 51.We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.Do consultees agree?We invite consultees’ views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so. |
| Your Response to Q25 | Click or tap here to enter text. |
| **Q26** | Consultation Question 52.We invite consultees’ views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate’s own child, to access the register to identify each other, if they both wish to do so:* + 1. if they are genetically related through the surrogate; and/or
		2. if they are not genetically related through the surrogate.
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| Your Response to Q26 | Click or tap here to enter text. |
| **Q27** | Consultation Question 53.For surrogacy arrangements outside the new pathway, we invite consultees’ views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register. |
| Your Response to Q27 | Click or tap here to enter text. |
| **Q28** | Consultation Question 72.We invite consultees’ views as to whether payment of costs by the intended parents to the surrogate should be able to be:* + 1. based on an allowance;
		2. based on costs actually incurred by the surrogate, but without the need for production of receipts; or
		3. based on costs actually incurred by the surrogate, and only on production of receipts.
 |
| Your Response to Q28 | Click or tap here to enter text. |
| **Q29** | Consultation Question 73.We invite consultees’ views as to:* + 1. whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
		2. the types of expenditure which should be considered “essential”.
 |
| Your Response to Q29 | Click or tap here to enter text. |
| **Q30** | Consultation Question 74.We invite consultees’ views as to:* + 1. whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
		2. the types of expenditure which should be considered additional, rather than essential.
 |
| Your Response to Q30 | Click or tap here to enter text. |
| **Q31** | Consultation Question 75.We invite consultees’ views as to: * + 1. whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
		2. the types of cost which should be included within this category.
 |
| Your Response to Q31 | Click or tap here to enter text. |
| **Q32** | Consultation Question 76.We invite consultees’ views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed). |
| Your Response to Q32 | Click or tap here to enter text. |
| **Q33** | Consultation Question 77.We invite consultees’ views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:* + 1. her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
		2. other lost potential earnings (as defined in paragraph 15.36 above).
 |
| Your Response to Q33 | Click or tap here to enter text. |
| **Q34** | Consultation Question 78.We invite consultees to share their experiences: * + 1. of the impact that payments received by a surrogate from the intended parents has had on the surrogate’s entitlement to means-tested social welfare benefits; and
		2. where a surrogacy arrangement has had an impact on the surrogate’s entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.
 |
| Your Response to Q34 | Click or tap here to enter text. |
| **Q35** | Consultation Question 79.We invite consultees’ views as to whether intended parents should be able to pay compensation to the surrogate for the following:* + 1. pain and inconvenience arising from the pregnancy and childbirth;
		2. medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
		3. specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

We invite consultees’ views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.We invite consultees’ views as to whether the level of compensation payable should be:* + 1. a fixed fee set by the regulator (operating as a cap on the maximum payable), or
		2. left to the parties to negotiate.
 |
| Your Response to Q35 | Click or tap here to enter text. |
| **Q36** | Consultation Question 80.We invite consultees views’ as to whether intended parents should be able to pay compensation to the surrogate’s family in the event of the pregnancy resulting in the surrogate’s death, including through payment of the cost of life assurance for the surrogate. |
| Your Response to Q36 | Click or tap here to enter text. |
| **Q37** | Consultation Question 81.We invite consultees’ views as to whether: * + 1. intended parents should be able to buy gifts for the surrogate; and
		2. if so, specific provision should be made for these gifts to be modest or reasonable in nature.
 |
| Your Response to Q37 | Click or tap here to enter text. |
| **Q38** | Consultation Question 82.We invite consultees’ views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.We invite consultees’ views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:* + 1. any sum agreed between the parties to the surrogacy; or
		2. a fixed fee set by the regulator.

We invite consultees’ views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:* + 1. no other payments;
		2. essential costs relating to the pregnancy;
		3. additional costs relating to the pregnancy;
		4. lost earnings;
		5. compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
		6. gifts.
 |
| Your Response to Q38 | Click or tap here to enter text. |
| **Q39** | Consultation Question 84.We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.Do consultees agree? |
| Your Response to Q39 | Click or tap here to enter text. |
| **Q40** | Consultation Question 85.We invite consultees’ views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate. |
| Your Response to Q40 | Click or tap here to enter text. |
| **Q41** | Consultation Question 92.We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.Do consultees agree? |
| Your Response to Q41 | Click or tap here to enter text. |
| **Q42** | Consultation Question 94.We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child’s country of birth.Do consultees agree?We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.Do consultees agree?We provisionally propose that: (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.Do consultees agree?We invite consultees’ views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child’s birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted. |
| Your Response to Q42 | Click or tap here to enter text. |
| **Q43** | Consultation Question 95.We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.Do consultees agree? |
| Your Response to Q43 | Click or tap here to enter text. |
| **Q44** | Consultation Question 97.We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree? |
| Your Response to Q44 | Click or tap here to enter text. |
| **Q45** | Consultation Question 99.We provisionally propose that: the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child’s birth, should also be recognised as the child’s legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, butbefore exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.Do consultees agree? |
| Your Response to Q45 | Click or tap here to enter text. |
| **Q46** | Consultation Question 107.We invite consultees’ views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.We invite consultees’ views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.We invite consultees’ views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues. |
| Your Response to Q46 | Click or tap here to enter text. |

END OF QUESTIONNAIRE – HOW TO SUBMIT

Thank you for completing this form. To submit it as a formal response to the Law Commission, save your completed form and email it as an attachment to surrogacy@lawcommission.gov.uk. Please note that the deadline for responding to our consultation is **11 October 2019**.