



**Law
Commission**
Reforming the law



Scottish Law Commission
promoting law reform

Building Families Through Surrogacy: A New Law

Summary of Report

This Report

Who are we?	The Law Commission of England and Wales and the Scottish Law Commission are independent bodies established by statute to make recommendations to government to reform the law in England and Wales, and in Scotland.
What are we doing?	We are making our recommendations for law reform, following the public consultation which we conducted in 2019. Our recommendations are accompanied by a draft bill (legislation) which would make our recommendations law if passed by Parliament.
What is it about?	Surrogacy – where a woman becomes pregnant and gives birth to a child for another family.
What happens next?	Government considers our recommendations and decides whether to change the law.

This Summary

This Summary does not summarise all of our recommended reforms to the law. Instead, it explains what the project is about and highlights our key recommendations for law reform.

In addition to this Summary, we have published a Report in three parts. The first part is a Core Report, which aims to present our conclusions in a clear and straightforward way for a wide audience, using non-technical language to describe our recommendations.

The second part of our Report is our Full Report, which explains the responses we received to our Consultation Paper and sets out in detail our recommendations for law reform.

The third part of our Report is a draft Bill, which implements our recommendations for reform.

Where we mention “our Report” in this Summary, we are referring to our Full Report.

[Access the Full Report, Core Report and draft Bill here.](#)

Introduction

What is surrogacy?

Surrogacy is the practice of a woman (who we refer to as the “surrogate”) becoming pregnant with a child that may, or may not, be genetically related to her, carrying the child and giving birth to the child for another family (who we refer to as the “intended parents”).

Surrogacy has long-standing historical origins, but it is only since the development of in-vitro fertilisation (“IVF”) in the 1970s that it has been possible for surrogacy arrangements to take place using the egg of an intended mother or an egg donor, rather than the surrogate’s own egg. As a result, there are now two different types of surrogacy:

Different forms of surrogacy

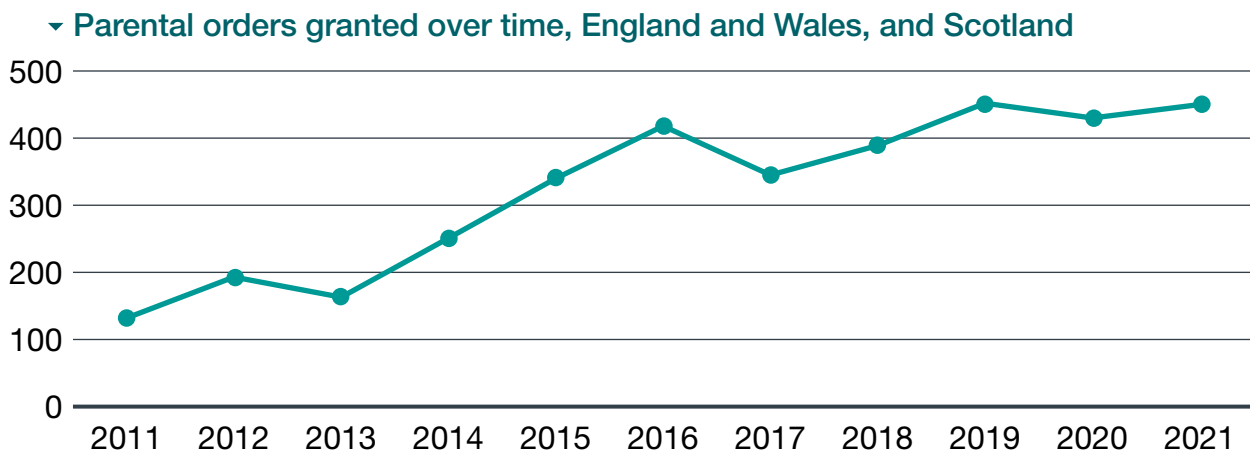
Traditional surrogacy (also called “straight” or “partial” surrogacy): a surrogacy arrangement where the surrogate is genetically related to the child born of the surrogacy arrangement because her own egg is used. Artificial insemination (not sexual intercourse) will be used to conceive the child.

Gestational surrogacy (also called “host” or “full” surrogacy): a surrogacy arrangement where the surrogate is not genetically related to the child born of the surrogacy arrangement because her eggs have not been used. IVF will be used to conceive the child.

Surrogacy is a possible way for people to form a family if they are unable to conceive or carry a foetus, or deliver a baby. As a result, the intended parents who enter into surrogacy arrangements usually belong to one of two groups:

- opposite-sex couples, same-sex female couples or single women, who are unable to carry a foetus to term; or
- same-sex male couples or single men.

We can estimate the number of surrogate births from the number of parental orders granted across England, Wales and Scotland each year. (A parental order is a court order that intended parents must obtain under the current law to become the legal parents of the child.) However, not all intended parents apply for an order, so the number of surrogate births is likely to be higher. Whilst the exact number of surrogate births is uncertain, they represent a tiny fraction of the total number of births in the UK each year – yet the impact that the law has on all those affected by surrogacy is significant.



Relatively few parental orders are granted by the courts in Scotland. In 2021, for example, 15 parental orders were granted.

An overview of our reforms

Our recommendations

We set out in this Summary a brief background to our project and why reform is needed. We provide an account of the current law of surrogacy and the problems with the law. We then explain the recommendations we are making for reform of the law.

Our report recommends a comprehensive range of reforms to make the law of surrogacy work better for children, surrogates and intended parents.

Our recommendations will ensure that surrogacy continues to operate on an altruistic, rather than a commercial basis. They seek to protect the best interests of the child by providing greater certainty to surrogates and to intended parents as regards legal parental status (a term we use to describe legal parenthood). In line with the shared intentions of the surrogate and the intended parents, our recommendations enable the intended parents to be recognised as the legal parents from birth, as long as that remains the wish of the surrogate, while protecting the surrogate's autonomy throughout pregnancy and childbirth.

Our recommendations provide important protections against the exploitation of women who become surrogates, by putting in place safeguards and checks before conception takes place. Finally, in view of the particular concerns associated with international surrogacy, our recommendations incentivise intended parents in England, Wales and Scotland who are considering surrogacy to enter into an arrangement here, rather than going abroad.

We recommend the following key reforms:

- The creation of a new pathway to legal parenthood for domestic surrogacy arrangements, which will allow intended parents to be legal parents from birth;
- 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 to the law governing the payments that intended parents can make to the surrogate, to provide clarity, transparency and an effective means of enforcing limitations, and to guard against the risks of exploitation;
- The creation of regulated bodies, called Regulated Surrogacy Organisations, who will be non-profit-making bodies regulated by the Human Fertilisation and Embryology Authority (HFEA) and will oversee agreements under the new pathway, providing important support to the surrogate and the intended parents;
- Reforms to the parental order process, that will continue to be used for some surrogacy agreements, including provision for the court to make a parental order without the consent of the surrogate, provided the welfare of the child requires that an order be made;
- 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. Our recommendations will ensure a surrogate is treated in the same way as any woman who is pregnant and the intended parents are treated in the same way as any other person with a new child;
- Some limited reforms and the provision of comprehensive guidance on nationality and immigration issues, to avoid unnecessary delay for those who have had a child through surrogacy overseas bringing the child to the UK.

Background to our project

Our Report is the conclusion of our surrogacy reform project, which has been undertaken jointly by the Law Commission of England and Wales, and the Scottish Law Commission. The terms of reference for our project called for a wide review of surrogacy law.

Terms of reference

The law, regulation and practice of surrogacy, including:

- the Surrogacy Arrangements Act 1985
- relevant sections of the Human Fertilisation and Embryology Acts 1990 and 2008
- family and regulatory law and practice insofar as it is relevant to surrogacy
- domestic and international surrogacy arrangements
- information about a child's genetic and gestational origins within the surrogacy context
- consequential impact on other areas of the law.

Work on the surrogacy project began in May 2018 and in June 2019 we published a Consultation Paper, inviting responses to our provisional proposals for law reform. Our consultation period ran from 6 June to 11 October 2019. We received over 680 responses.

During the project we have heard from many individuals and organisations who endorse and support the use of surrogacy. We have also heard from many individuals and groups who oppose surrogacy as a matter of principle, and wish to see it prohibited. The question whether surrogacy should be permitted was not within the scope of our project. Our project took as its starting point Government's support of surrogacy as part of the range of assisted conception options. 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.

The current law of surrogacy

Current surrogacy law is a combination of legislation and case law (that is, law as established by court decisions). The most important pieces of legislation relating to surrogacy are the Surrogacy Arrangements Act 1985 and the Human Fertilisation and Embryology Act 2008. Both statutes apply to England and Wales, and Scotland.

Unenforceability of agreements

The Surrogacy Arrangements Act 1985 provides some limited regulation of surrogacy in the UK by making agreements to enter into a surrogacy arrangement unenforceable. So, for example, a surrogate could not be forced to hand over a child to intended parents simply because the agreement said that she should. This Act also creates criminal offences in relation to commercial surrogacy, such as prohibiting commercial surrogacy agencies.

Legal parental status

The Human Fertilisation and Embryology Act 2008 and case law provide the rules to determine who the legal parents of a child born through a surrogacy agreement are, at the time that the child is born.

In law, the legal mother of the child will be the surrogate, while the father or second parent will usually be either the surrogate's spouse or civil partner if she has one.

However, it is possible for an intended parent – male or female – to use certain provisions of the Human Fertilisation and Embryology Act 2008 to become a second parent, or for a male intended parent whose sperm has been used to conceive the child to be recognised as the legal father – although in either case, this typically only applies where the surrogate has no spouse or civil partner.

Therefore, at the time of birth, often neither, or at most only one, of the intended parents will be the legal parents of a child born following a surrogacy agreement.

Parental orders

Since 1994, there has existed a legal mechanism to transfer legal parental status to the intended parents and to extinguish the surrogate's legal parental status. This is called a parental order. Currently, the rules governing parental orders are set out in sections 54 and 54A of the Human Fertilisation and Embryology Act 2008.

As well as transferring legal parental status, a parental order also provides the intended parents with parental responsibility (in England and Wales) or parental responsibilities and parental rights ("PRRs") (in Scotland). These are all the duties and rights that a parent has in relation to a child, relating to, for example, making decisions about the child's living arrangements, medical care and education. Parental responsibility is not the same as being a legal parent; some legal parents will not have parental responsibility, while people who are not a child's legal parents can have parental responsibility/PRRs for the child.

A parental order cannot be applied for until after the child has been born. The court also cannot make a parental order less than six weeks after the child's birth. That is because the parental order requires the consent of the surrogate, and the law says that her consent can only validly be given once that period of time has passed.

In practice, intended parents are likely to have to wait up to six months to a year after the child's birth before a parental order is made because of the time it takes for the proceedings to come to court.

Since parental orders were introduced in 1994, the scope of who can obtain a parental order has changed significantly, most recently with amendments to the law allowing single intended parents to obtain a parental order.



1 November 1994 -
5 April 2010

Married couples could be granted a parental order



6 April 2010 -
2 January 2019

Civil partners and couples in an enduring family relationship could also be granted a parental order

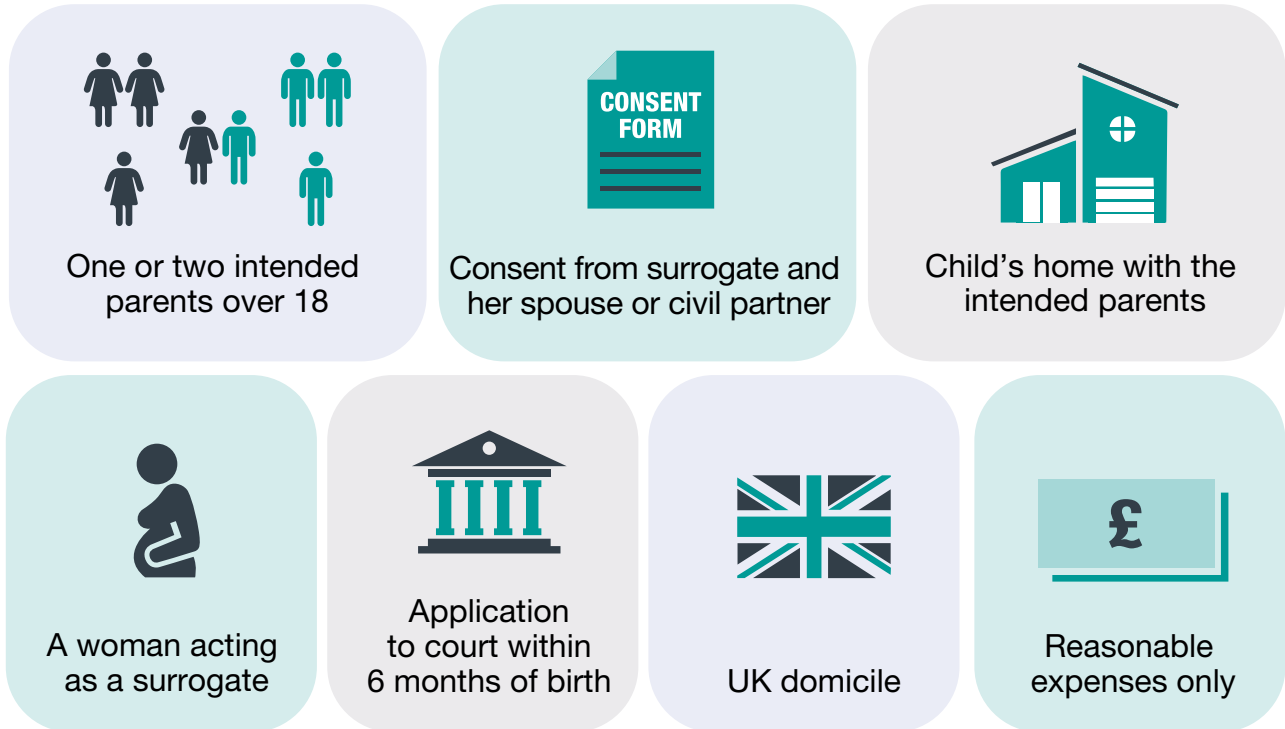


3 January 2019 -
present

Single people could also be granted a parental order

In order for the court to make a parental order, certain requirements must be met. Those requirements have been interpreted in case law, so that it is not always clear, simply by looking at the statute, whether or not the requirements are met in a particular case.

The child's welfare is the paramount consideration



If all the requirements are met, then the court has the ability to make a parental order. In practice, where the requirements are met the grant of a parental order will almost invariably be in the best interests of the child. However, where the surrogate or her spouse or civil partner does not consent, then the court has no ability to make the parental order, even where it would be in the best interests of the child to do so.

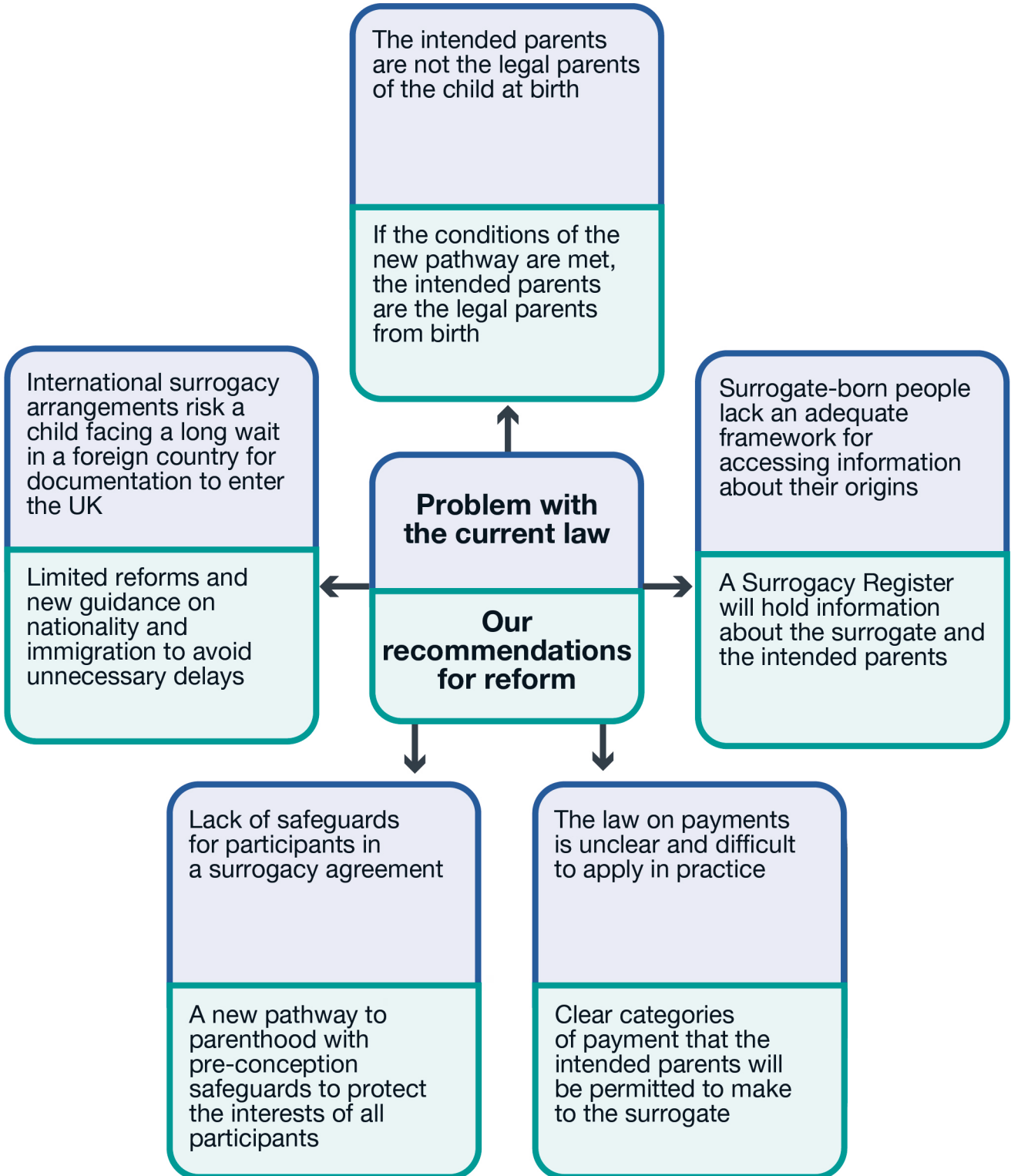
Problems with the current law

The current law governing surrogacy does not work in the best interests of any of the people involved: the children born through surrogacy, women who become surrogates, or intended parents:

- Under the current law the surrogate and her spouse or civil partner are the legal parents of the child unless and until a parental order is obtained by the intended parents. This does not reflect the best interests of the child. The surrogate, who does not intend to raise the child, is legally responsible for the child until the parental order is granted. In the vast majority of cases, where the child is cared for by the intended parents from birth, the law means that those raising the child have no legally recognised relationship with the child until the grant of the parental order.
- Because the intended parents are not recognised as the legal parents of the child until a parental order is granted, the intended parents cannot (unless they have been granted parental responsibility or PRRs) make any decisions in respect of the child, such as decisions in respect of medical treatment. These decisions must be made by the surrogate and her spouse or civil partner, who are not caring for and raising the child.
- Under the current law, there is no formal, legal scrutiny of a surrogacy agreement until the child is born and a parental order is applied for. That is often too late a stage for reservations about the agreement to be satisfactorily dealt with. The court is presented with a child who has been born and is being raised by the intended parents. The best interests of the child will almost invariably point towards the grant of a parental order, in all but the most exceptional of circumstances.
- The current law relating to payments that the intended parents are able to make to the surrogate lacks clarity. There is no definition of what payments may be paid to the surrogate as “expenses reasonably incurred”, which has resulted in concerns surrogates may in some cases receive payments beyond their expenses. Further, the limit the law places on payments, which is unclear in the first place, is not currently being enforced. All that the court can do where the law has not been followed is to refuse the grant of a parental order, which will not usually be in the best interests of the child.
- One consequence of the current law is to encourage intended parents to undertake an international surrogacy arrangement, in a country that provides them with much greater certainty as to the outcome of the arrangement. International surrogacy arrangements mostly take place in countries where the intended parents are recognised as the legal parents of the child at birth, and are named on the child’s birth certificate. However, in some instances, international arrangements raise particular concerns about the exploitation of women and children.
- In addition to these problems, there are other areas of the current law which were not developed with surrogacy in mind; for example employment law, or the law governing the right of individuals to access information about their origins.

Our recommendations for reform of the current law

Our recommendations will address the problems with the current law which we have identified.



A new pathway to legal parenthood

We recommend the introduction of a new pathway to legal parenthood in surrogacy cases, to address the problems with the current law. Under the new pathway, intended parents will be able to become the child's legal parents at birth. The new pathway will have eligibility conditions, and will introduce essential safeguards before conception, so that state regulation comes before, not after, the birth of the child.

Our recommended new pathway is explained in detail in our Report, and a diagram showing a representation of it is on the next page.

The new pathway takes a different approach to the current route of obtaining a parental order. Intended parents will not need to make an application to the court. Instead, the new pathway will be overseen by non-profit making surrogacy organisations (called Regulated Surrogacy Organisations) who will be regulated by the HFEA.

Eligibility conditions

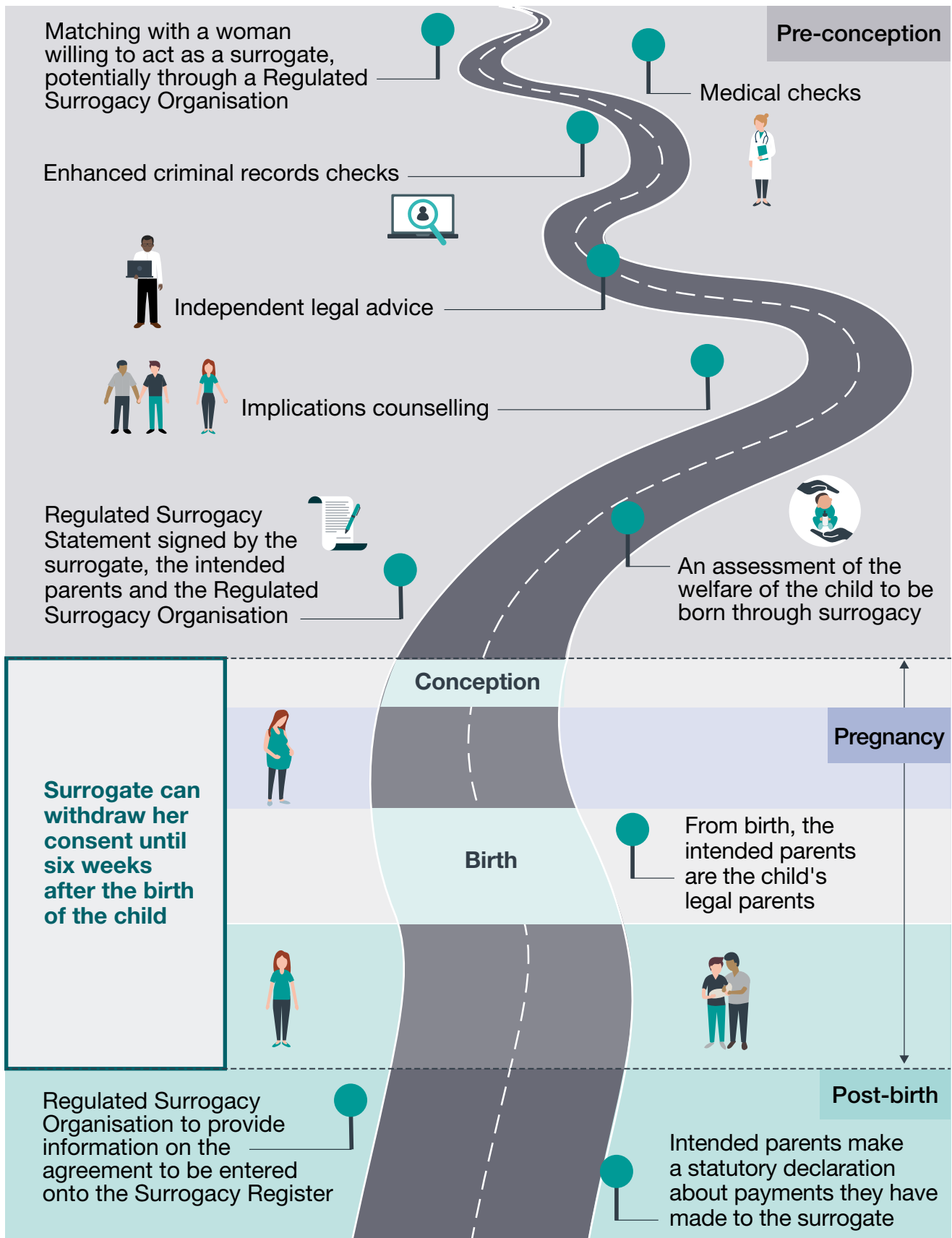
- the surrogate must be at least 21 years old.
- the intended parents must be at least 18 years old. This is the minimum age for obtaining a parental order under the current law.
- at least one of the intended parents must have a genetic link to the child.
- where there are two intended parents, they must be married, in a civil partnership, or living as partners in an enduring family relationship.
- at least one of the intended parents, and the surrogate, must meet a test of connection with the UK (domicile or habitual residence) at the time their surrogacy agreement is admitted on to the new pathway, and when the child is born.

Safeguards for the new pathway

In our Report, we discuss in detail the requirements that we recommend must be met for a surrogacy agreement to enter into the new pathway and, therefore, for the intended parents to become the legal parents at birth. These are:

- an agreement between the surrogate and the intended parents
- a pre-conception assessment of the welfare of the child to be born of the surrogacy agreement
- independent legal advice about entering into the surrogacy agreement for the intended parents and the surrogate
- implications counselling to be undertaken by the intended parents and the surrogate
- medical screening of the surrogate and the intended parents
- enhanced criminal record checks to be carried out on the surrogate and her spouse, civil partner or partner (if any), the intended parents, and any adult over the age of 18 who lives with the intended parents
- agreement of a Regulated Surrogacy Organisation to admit the surrogacy agreement onto the new pathway.

The new pathway to legal parenthood



Withdrawing consent in a new pathway surrogacy agreement

While the pre-conception screening and safeguarding checks should mean that surrogacy agreements rarely break down, as a further safeguard, we recommend that the surrogate has the right to withdraw her consent to the surrogacy agreement, from the point of conception until six weeks after the birth of the child.

Only the surrogate has the right to withdraw her consent. After conception on the new pathway the intended parents cannot change their minds – just like parents who conceive outside surrogacy cannot walk away from their legal responsibilities.

Surrogate withdraws consent after treatment leading to conception but before birth	Surrogate withdraws consent within six weeks of the birth
Surrogate is the legal parent at birth.	Intended parents are legal parents at birth.
One of the intended parents may also be a legal parent through operation of the current law.	Surrogate is not the legal parent.
Intended parents must apply for a parental order if they wish to gain legal parental status instead of the surrogate	Surrogate must apply for a parental order if she wishes to gain legal parental status instead of the intended parents.

The Regulated Surrogacy Statement

We recommend that the essential elements of a surrogacy agreement on the new pathway should be set out on an official form, the Regulated Surrogacy Statement, and be signed by the surrogate, the intended parents and the Regulated Surrogacy Organisation.

In our Report we make recommendations about the details that should be included in the Regulated Surrogacy Statement. These are:

- a statement that the intended parents will be the legal parents at birth, and that the surrogate will not be the legal parent of the child born, subject to her withdrawing her consent to the surrogacy agreement before the birth;
- confirmation that a welfare of the child assessment has been completed to the satisfaction of the RSO;
- confirmation that the parties have fulfilled the screening requirements;
- a statement by the intended parents and the surrogate that the child born of the surrogacy agreement will have their home with the intended parents;
- a description of the permitted payments to be made by the intended parents to the surrogate (although not a breakdown of all agreed expenses);
- identifying details of those involved in the surrogacy agreement: the intended parents and the surrogate, the Regulated Surrogacy Organisation and (if any) the clinic;
- details of whose genetic material is being used in conception:
 - this will include identity in the case of the surrogate, intended parents, and known donors;
 - in the case of identity-release gamete donors (those donors who are anonymous to the recipients of their gametes, but whose identity can later be released to a child born of those gametes once he or she reaches the relevant age), details of how to access information regarding the donor through the HFEA Register of gamete donors; and
- non-identifying information regarding the intended parents, surrogate and any known donors. This information could include a physical description of the parties, their marital status, or ethnic group.

The reformed parental order process

Our recommended new pathway will mean that in most domestic surrogacy arrangements, intended parents will not need to apply for a parental order to become the child's legal parents. However, the parental order process will still be needed in the following situations:

1. Where the surrogate in a new pathway agreement exercises the right to withdraw her consent before the child is born. The surrogacy agreement will be removed from the new pathway, and the intended parents would need to apply for a parental order so the court can decide who the legal parents are.
2. Where the surrogate in a new pathway agreement withdraws her consent in the six-week period after the child is born. The intended parents will still be the child's legal parents; if the surrogate wants to be the legal parent of the child, she will need to apply for a parental order so that court can decide who the legal parents are.
3. Where surrogacy teams choose to make agreements off the new pathway.
4. International surrogacy arrangements. If intended parents enter an international surrogacy agreement, then they will continue to need to apply for a parental order to be recognised as the child's legal parents on their return.

Eligibility for the parental order process

Eligibility conditions for the reformed parental order process are very similar to those for the new pathway. The key difference is that in the parental order process one of the intended parents (but not, as in the new pathway, the surrogate), must be domiciled or habitually resident in the UK at the time of applying

for the parental order and at the time the order is made. This means that the parental order process will continue to be available in international surrogacy arrangements.

Reforms to the parental order process

Many aspects of the parental order process will stay the same – the minimum age intended parents are required to be, the requirement that one intended parent have a genetic link to the child, the need for the child must be living with the intended parents when the application for a parental order is made. Likewise, the welfare of the child will continue to be the court's paramount consideration.

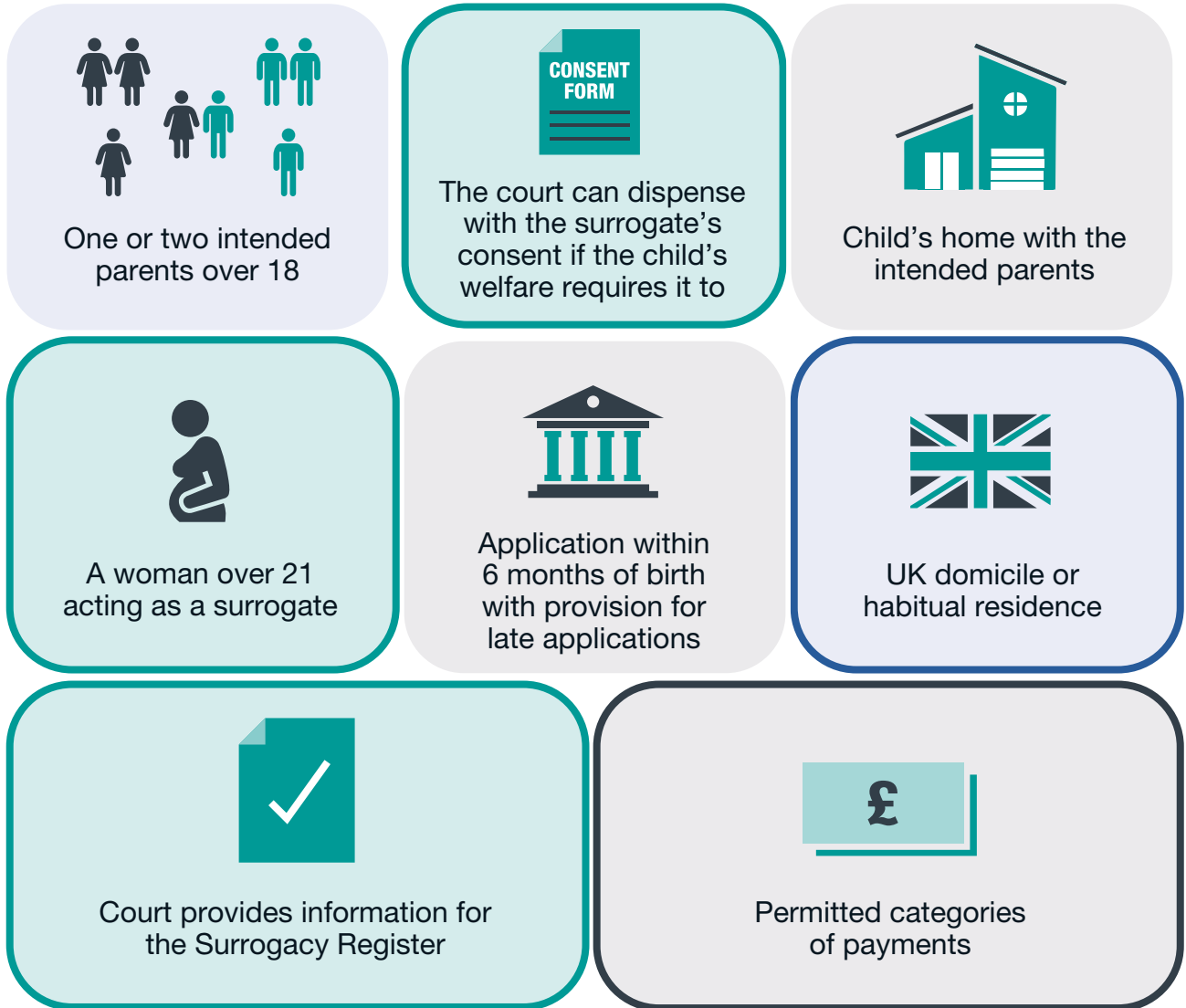
Our recommendations about the types of payments that can be made by the intended parents to the surrogate, and the age of the surrogate, are the same as in the new pathway.

The main change that we recommend to the parental order process involves the surrogate's consent. At present, a parental order can only be made if the surrogate freely consents to it. We recommend that the court should be able to dispense with the requirement that the surrogate consents to a parental order, but only in circumstances where the welfare of the child requires it. This is the same test that applies to adoption, and it has been interpreted by the court as meaning that nothing else will suffice to satisfy the child's needs throughout his or her life.

Because we recommend that in all surrogacy agreements (whether on the parental order route or new pathway) the surrogate's spouse or civil partner should not be a legal parent of a child born through a surrogacy agreement, their consent will no longer be needed for a parental order to be granted.

The requirements for a parental order under our recommended reforms are shown in the diagram below.

The child's welfare is the paramount consideration



Regulation of surrogacy arrangements

We recommend the creation of Regulated Surrogacy Organisations (RSOs).

The RSO's main role is to support all the parties to the surrogacy agreement, and act as the gatekeepers to the new pathway. The RSO will assess whether a surrogacy agreement meets all of the eligibility conditions and the screening and safeguarding requirements, and they will decide whether to sign the Regulated Surrogacy Statement so that the agreement can proceed on the new pathway.

RSOs will be non-profit making organisations, to ensure that their decisions are not influenced by commercial considerations.

RSOs will be regulated by the Human Fertilisation and Embryology Authority (the HFEA), the body which currently regulates fertility clinics and maintains the register containing information about donor-conceived people. The HFEA would grant a licence to RSOs, if satisfied they meet the licence conditions, which would enable them to operate; we recommend that RSOs should be subject to the same sanctions that currently apply to other bodies regulated by the HFEA, in the event that they breach their licence conditions.

We also recommend that the HFEA creates a Code of Practice for surrogacy, to guide RSOs and ensure that they function in a way that achieves the best outcomes for surrogate-born children, surrogates, and intended parents.

In addition to their role overseeing agreements on the new pathway, RSOs will also have duties to keep records that relate to surrogacy agreements on the new pathway. The RSO must transfer these records to

the HFEA within 12 weeks of the birth of a child from the surrogacy agreement, once all of this information is available. The HFEA will add the information to a new Surrogacy Register (described on page 21) which surrogate-born people will be able to access when they are older.

Payments to the surrogate by the intended parents

In our Report, we discuss the issue of payments by the intended parents to the surrogate.

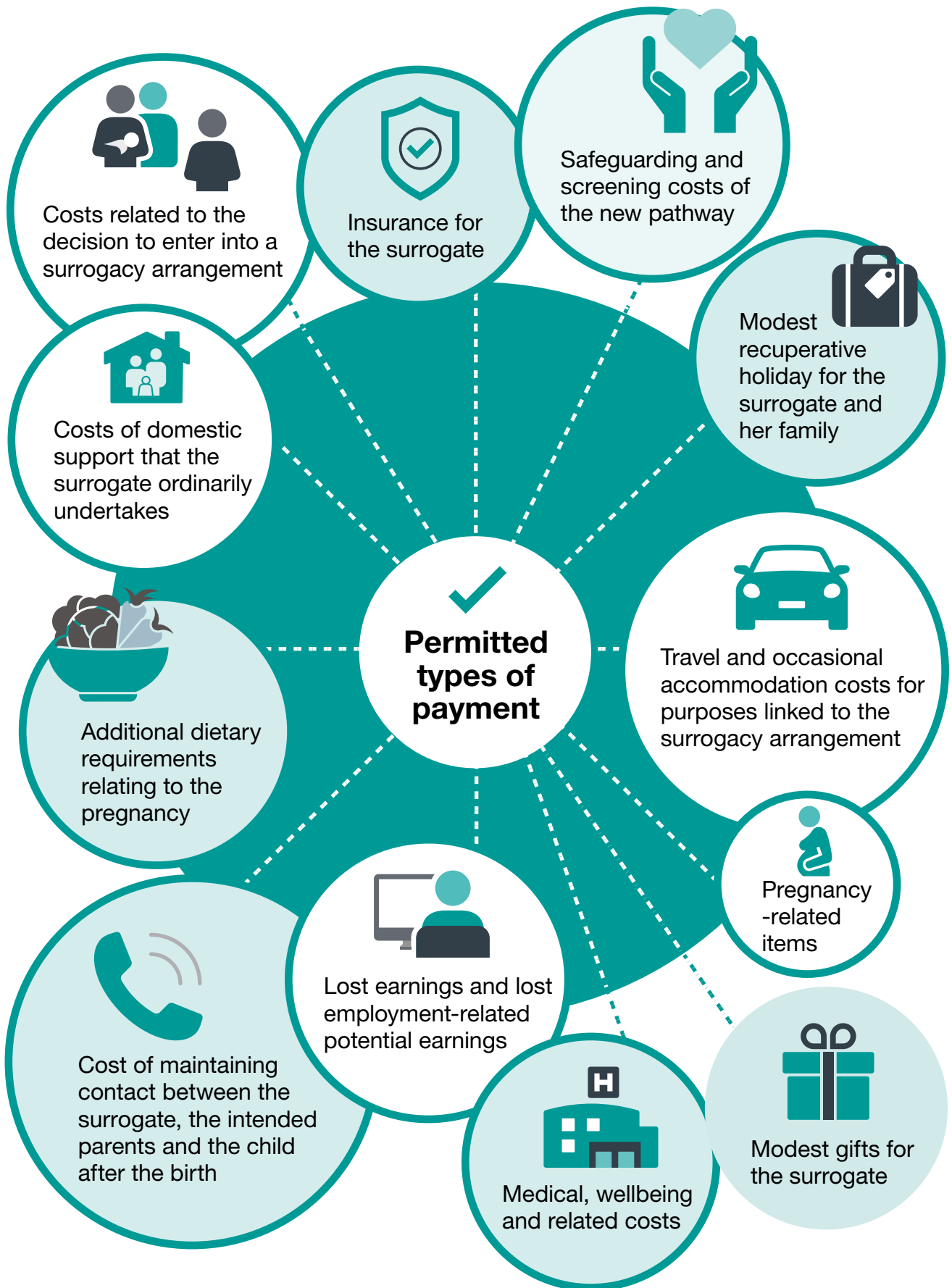
We make recommendations for the types of payments that the intended parents should be permitted to make to the surrogate or for her benefit. We recommend that the types of payment that are permitted are the same on the new pathway and in relation to parental order applications, so that there is consistency across all domestic surrogacy arrangements and so that the payment scheme does not influence people as to what route to take.

However, on the new pathway, we recommend that intended parents should be required to meet some of these costs (unless the surrogate wishes to do so herself), namely:

- life assurance and critical illness cover for the surrogate. This should cover the period beginning with the commencement of any fertility treatment and lasting for two years from the point of conception; and
- the costs of meeting the screening and safeguarding requirements for the new pathway.

In addition to these permitted payments, we recommend that the intended parents be able to make modest gifts to the surrogate.

The permitted categories of payments are shown in the diagram below.



Payments which are not permitted

Any payment that is not permitted by law is prohibited, and cannot be made to the surrogate, or to others on her behalf. Prohibited payments are shown on the diagram below. We have decided to prohibit the specific categories referred to on the diagram because to allow them would enable commercial surrogacy, and run the risk of exploitation of the surrogate.



We also make recommendations about the way in which intended parents are permitted to make payments to the surrogate. We recommend that:

- payments made by the intended parents to the surrogate, or on her behalf, should be based on reimbursing her actual costs, not an allowance that is paid on a regular basis.
- However, a “float” can be given to the surrogate to cover costs that are likely to come up, so that she is not left out of pocket until she is reimbursed by the intended parents.
- the rules on payments in relation to parental orders apply between the time the surrogacy agreement is entered into, and the point six weeks after the birth of the child, for the purposes of recovery by either party or civil penalties. When deciding whether to make a parental order, the court will look at payments made from a year before the surrogacy agreement was entered into, up until the order is made. This is in line with the principle on the new pathway that payments should be regulated during the period when the surrogate may decide whether or not to give her consent, so that they do not influence her decision.

If payments of types that are permitted are agreed but not paid, the surrogate can recover these payments from the intended parents. The only exception to this is in the case of the costs of the recuperative holiday, as we considered this to be more in the nature of a gift.

Access to information

We recommend the introduction of a new Surrogacy Register, to be maintained by the Human Fertilisation and Embryology Authority (HFEA).

The Surrogacy Register will record information for all surrogacy agreements, whether on the new pathway or following the parental order process, domestic or international, gestational or traditional. This wide scope will ensure that surrogate-born people can access information about their origins through the Surrogacy Register.

The Surrogacy Register will record identifying and non-identifying information about surrogates and intended parents. Information about other gamete donors will not be included on the Surrogacy Register, but will continue to be recorded in the separate HFEA Register.

The Surrogacy Register will also record contact details for any fertility clinic used by those involved in the surrogacy arrangement, whether it is based in the UK or overseas.

Information will be provided to the HFEA for inclusion on the Surrogacy Register by either:

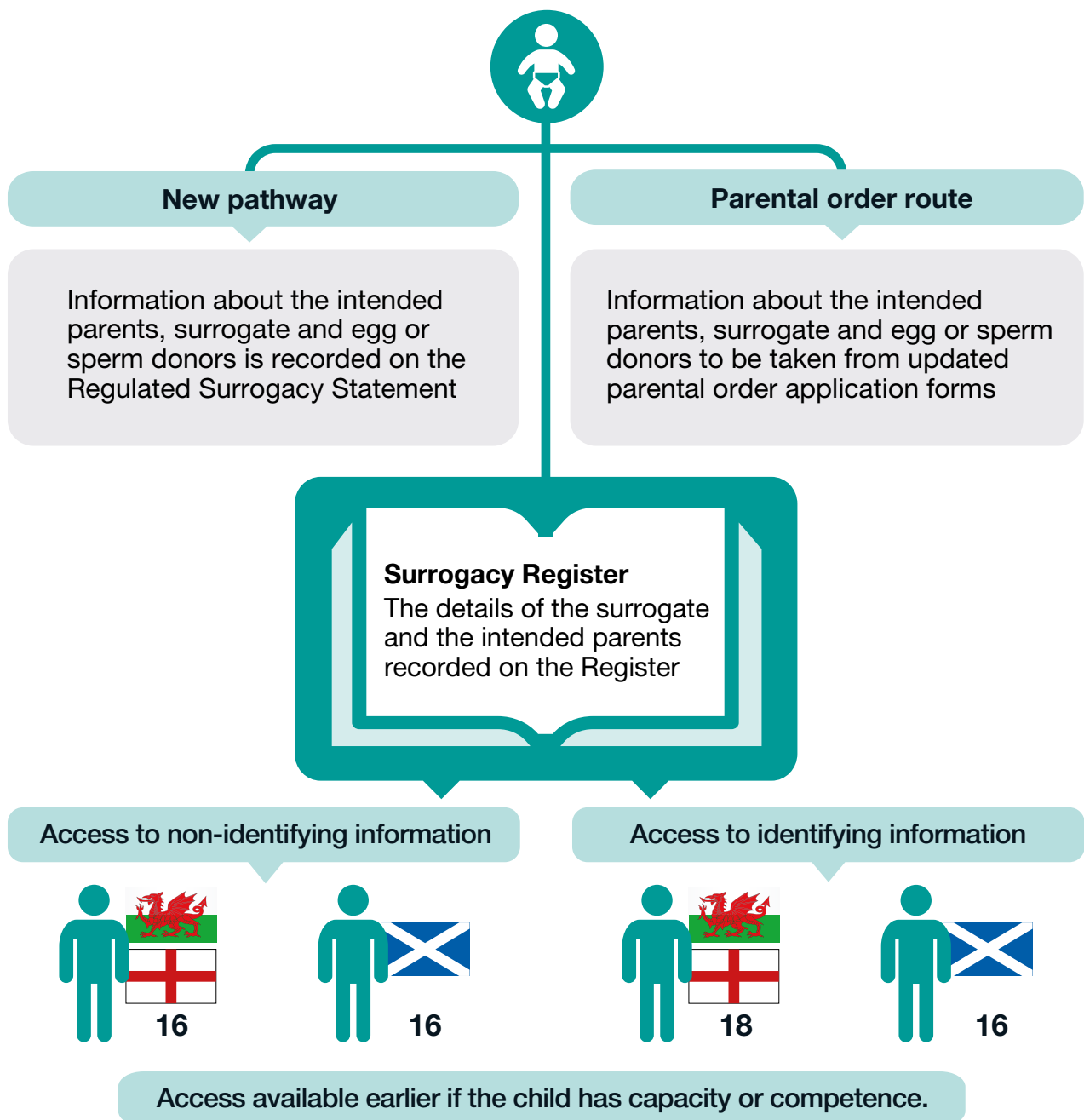
- the Registered Surrogacy Organisation for an agreement on the new pathway; or
- the court, upon the making of a parental order. The application for a parental order will contain the relevant information

Access to the Surrogacy Register

We recommend that a surrogate-born person should be able to access the information contained in the Surrogacy Register.

The age at which a person can access information depends on whether

- the information is identifying or non-identifying; and
- the surrogate-born person lives in England and Wales, or in Scotland, as the law is slightly different in each jurisdiction.



Employment law and surrogacy

In addition to the main reforms we have outlined in this summary, we recommend that intended parents be entitled to improved employment rights, namely:

- one of the intended parents should have the right to receive a benefit equivalent to Maternity Allowance where they fulfil the criteria for that benefit;
- intended parents should have improved rights in respect of
 - their ability to take time off work to attend ante-natal appointments; and
 - the timing of beginning their statutory leave, which should be up to 14 days before the expected date of birth of the child.

International surrogacy arrangements

In our Report we also consider international surrogacy arrangements. These arise where intended parents from England, Wales or Scotland enter into a surrogacy arrangement to have a baby with a surrogate from outside the UK, with the baby being born outside the UK. Although it is difficult to be sure, it appears that international surrogacy arrangements are increasing, and may account for up to half of surrogacy arrangements entered into by intended parents from England, Wales or Scotland. Intended parents may enter into international surrogacy arrangements because other jurisdictions permit the intended parents to become the legal parents of the child from birth. However, for the intended parents to be recognised as the legal parents in the UK, a parental order application is still needed when the baby is brought to the UK. Intended parents may also choose international surrogacy because it is easier to find a woman willing to act as a surrogate overseas.



One of the main aims of the recommendations for reform of surrogacy law that we make is to encourage intended parents in the UK who wish to use surrogacy to do so in the UK, rather than overseas. That is to ensure that surrogate-born children, surrogates and intended parents benefit from the protection that our reforms would provide. While we do not consider that all international arrangements will necessarily be exploitative, the risks of exploitation is considerably higher than in domestic arrangements and serious concerns have arisen as regards the treatment and conditions of surrogates in some countries. Moreover, those risks cannot be controlled by domestic laws.

We are, however, concerned with the welfare of children born to UK intended parents in international surrogacy arrangements. The current law can result in unnecessary delay in intended parents being able to bring their child to the UK, leaving the intended parents separated from their families and support network for the first weeks or months of their child's life, and sometimes without ready access to health care. The law can also result in children being left "stateless" where they do not hold citizenship either in their country of birth or in the UK.

International Surrogacy: Our Recommendations

International arrangements

We recommend that international surrogacy arrangements are excluded from the new pathway. Therefore, where a child is born through an international arrangement the intended parents will still need to apply for a parental order.

UK surrogacy arrangements with foreign intended parents

We also consider in our Report reform around international surrogacy arrangements that involve intended parents from overseas coming to the UK. Such arrangements are much less common.

To protect children involved in these arrangements, we recommend that for foreign intended parents coming to the UK, a system of restrictions (similar to those for international adoption) should be imposed to regulate the removal of a child born as a result of a UK surrogacy arrangement, for the purposes of obtaining a parental order (or equivalent) overseas.

Bringing the child home

We make recommendations to help intended parents bring their child home to the UK more quickly after the child has been born by speeding up the time it takes to obtain a passport or visa for the child. In particular, we recommend changes to operational practice in relation to applying for passports and visas for surrogate-born children, so that a file can be opened, and the application process can begin, before the child is born, even though the formal application will not be able to be made until after the child has been born.

We also recommend that one of the bases upon which a visa can be obtained for the child, which currently operates outside the Immigration Rules at the discretion of the Secretary of State, is brought within the Immigration Rules to provide greater certainty. We also recommend that the surrogate's spouse should not be the legal parent of the child for nationality purposes, which will make it easier for children born to married surrogates in international arrangements to acquire British nationality from a genetically related British intended parent.

Guidance

We recommend 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, and existing guidance should be updated to include an explanation of the new pathway.

Conclusion and what happens next

We believe that the recommendations in our Report would provide a robust new system to govern surrogacy, which will work better for children, surrogates and intended parents. We hope that our recommendations are widely welcomed, but we recognise that this is a contentious area, where people hold a wide range of strongly-held views, and consensus is not always possible to achieve. We are grateful to everyone who engaged with us during our project and have taken full account of all the views put to us. We have explained our reasoning for all the decisions that we have taken in detail in our our Full Report.

It is now for Government to consider and respond to the Law Commissions' recommendations. Under the Protocol between the Lord Chancellor (on behalf of Government) and the Law Commission of England and Wales, the responsible Minister will respond to the recommendations as soon as possible, and in any event with an interim response within six months of publication of the Report and a full response within a year.

Alongside our Report we have published a draft Bill, giving effect to our recommendations. If Government accepts our recommendations, that Bill can then be introduced into Parliament in order to become law.



