

Surrogacy Consultation Questions

ABOUT YOU

1. What is your name?

Name (Required)

-

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Christian Concern

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

(Required – Choose one response)

- This is a response on behalf of an organisation

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

N/A

5. What is your email address?

Email address:

-

6. What is your telephone number?

Telephone number:

-

7. 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, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. All such cases should therefore be referred to a High Court judge.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Sale and exploitation of people is a matter of the most serious concern which should not be downgraded in seriousness by how it is treated in the courts.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

1.7 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?

NO

We vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. We believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

We profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

We profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

We profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 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?

NO

We profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility

in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 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?

OTHER

We profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as

the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

We profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy

human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

We profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore, a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 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?

NO

We profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 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.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

We profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

We profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

We profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

We profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

We profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

NO

Children should not be treated as commodities in this way.

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

We profoundly oppose a three-parent model of legal parenthood, even if it is temporary. This is an attempt to redefine the basic concepts of parenthood and family. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:
 - (a) administrative, or
 - (b) judicial.

We profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The birth mother's interests should also receive special consideration.

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and

- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The birth mother's interests should also receive special consideration.

Paragraph 8.121

Consultation Question 25.

- 1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. We are also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. We do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

- 1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

We profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal

responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 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?

NO

We profoundly disagree with the proposals for the ‘new pathway’. We do not agree that the ‘intended parents’ should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 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?

OTHER

We agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 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.

We profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

We profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

We disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. We consider surrogacy to be a violation of the human rights of both women and children which should not be legitimised in any form.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

We disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children which should not be legitimised in any form.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

We disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children which should not be legitimised in any form.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

We disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children which should not be legitimised in any form.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

We disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children which should not be legitimised in any form.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

We disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children which should not be legitimised in any form.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

We disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

We disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children which should not be legitimised in any form.

Paragraph 9.94

Consultation Question 37.

1.44 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?

OTHER

We profoundly disagree with the proposals for the 'new pathway'. We disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which we consider a violation of the human rights of both women and children.

1.45 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.

We profoundly disagree with the proposals for the 'new pathway'. We disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

We do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which we consider to be a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

We disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which we consider to be a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

We **VEHEMENTLY** disagree with this proposal and the opening up of surrogacy in this country, because we consider it to be a violation of the human rights of both women and the child. The idea of organisations charging to facilitate surrogacy is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 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?

NO

We **VEHEMENTLY** disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy **MUST** remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

There is a case for allowing the child to access his or her original birth certificate whenever he or she would like to do so, without waiting for the child to reach the age of 18.

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

We profoundly disagree with the proposals for the 'new pathway'. We do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

We do not consider the birth registration system to be in need for reform. We are particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 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?

YES

Paragraph 10.89

Consultation Question 47.

1.56 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?

YES

1.57 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:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) 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?

OTHER

We profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 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.

We agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

1.59 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?

YES

1.60 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.

We agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

1.62 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?

YES

1.63 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.

YES, we agree.

Paragraph 10.121

Consultation Question 52.

1.64 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.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 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.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 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;

NO

We disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (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:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or

- (b) 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?

NO

We disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

We profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

We profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

We profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

1.72 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?

NO

We profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. We dispute that surrogacy is ever a 'medical necessity'.

1.73 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 profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. We therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

1.74 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?

YES

Paragraph 12.64

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

We fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. We dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

We dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 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 oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. We dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

We dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

We profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While we oppose surrogacy and want to see it banned, we support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While we oppose surrogacy and want to see it banned, if it happens, we support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

We are opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear

that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a *fait accompli*.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

We profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. We are opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. We therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

We profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. We suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

We are opposed to surrogacy per se and would like to see it banned, because we consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and we suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

We profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and we suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

We profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 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?

OTHER

We profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 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?

OTHER

We profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

We profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

We profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 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.

OTHER

We are profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

We are profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 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.

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 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".

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual

essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 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.

We opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 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.

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.29

Consultation Question 76.

1.99 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).

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

We are therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 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).

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

We are therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 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.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 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.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 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 are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 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.

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 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.

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why we oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 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.

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

We are therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 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.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

We are therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 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.

Leave both check boxes blank.

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

We are therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 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.

Leave all check boxes blank.

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

We are therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because we oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because we oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 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?

OTHER

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We are opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 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.

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

We would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

We are opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 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?

OTHER

We profoundly disagree with the proposals for the 'new pathway'.

1.117 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?

OTHER

We profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 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?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. We therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 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?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. We therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 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?

NO

1.125 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?

YES

1.126 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.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 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?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. We therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 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?

OTHER

We agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

We profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 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, but

1.133 before 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?

NO

We do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and we believe it should apply equally to international surrogacy arrangements. We therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

We do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

We are opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

We are opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

We are opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

We are opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 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.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 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.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

The problem with surrogacy – eroding family bonds

There is a strong Christian case against surrogacy being allowed. The starting point consists of the truths that all human beings are created in the image of God, that as such human life is sacred and that we have a duty to protect marriage and parenthood as instituted by God.

As surrogacy involves a woman carrying an embryo produced from the eggs of another woman, it inevitably splits biological motherhood into two parts and thus sets up a conflict between two women over their relation to the child that has been conceived. The surrogate mother has bonded with the child during pregnancy, and to sever this relationship after birth can be devastating for her and the child.

By the same token, surrogacy increases the risk of an impaired relationship between the biological father of the child and the genetic mother who gave the eggs in the first place, because she has relinquished the responsibility for pregnancy to another woman with whom he has no relationship.

In the event that a doctor implants several eggs in the surrogate, surrogacy can involve the risk of selective reduction, which involves destruction of some of the embryos.

Surrogacy is banned in most European countries

The temptation with 'progressive' causes such as making surrogacy more available is to assume that everybody else is supporting them, therefore so should we. This mentality can apply across countries. However, in fact surrogacy is banned in most European countries: France, Spain, Italy, Switzerland, Germany, Denmark, Norway, Sweden, Finland, Austria, Poland, Slovakia, Estonia, Latvia, Lithuania, Hungary, Croatia, Slovenia, Romania and Bulgaria.

Within the last few weeks there have been massive protests in Paris over the proposal to pass a law to legalise surrogacy as well as IVF for single women and lesbians. In addition, it is a practice that has been severely criticised even in the international institutions that are often found to be promoting progressive and individualistic policies on family life. In 2016 the Committee on Health, Social Affairs and Sustainable Development of the Council of Europe rejected a report calling for the legalization of surrogacy across all of Europe.

In light of these realities there is no case for saying that the UK must permit the commercialisation of surrogacy.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the

institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the ‘intended parents’ the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their ‘parents’ not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that ‘procreative liberty’ confers some kind of human right to surrogacy and the idea that a woman has a human right to be a ‘surrogate.’ These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing, and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 18.22