

A Parliamentary Briefing: The Law Commission draft Bill on surrogacy arrangements in the UK

In March 2023 the Law Commission for England and Wales and the Scottish Law Commission published the outcome of their 2019 consultation 'Building Families Through Surrogacy', which set out a proposed programme of reform of the law governing surrogacy arrangements in England, Scotland and Wales. The measures included a draft Bill, explored here.

We are self-funded UK campaign groups, which came together to raise awareness of the potential negative impact of the draft Bill on mothers and children: we do not believe the proposed law adequately protects women, nor does it take a child-centred approach. We are extremely concerned at the prospect of part, or all, of this Bill being taken forward into legislation.

The situation in the UK today:

1. **The number of people having a baby using a surrogate mother in England and Wales has almost quadrupled in the last 10 years¹.** Parental orders, which transfer legal parentage from the surrogate mother to a commissioning couple or individual, rose from 117 in 2011 to 413 in 2020.
2. **In the UK, commercial surrogacy is illegal, while 'altruistic' surrogacy with payment of 'reasonable expenses' is permitted.** Many assume 'altruistic' surrogacy involves a woman carrying a child for a relative, where money does not change hands: this is rarely the case. 'Expenses' often average between £12,000- £20,000 and can be paid monthly to women, like a salary. This provides a very real financial motive to vulnerable women to enter into surrogacy arrangements. Women entering into these arrangements are often unknown to the commissioning couple/individual prior to being assisted with introductions by a surrogacy agency.
3. **A commissioning couple currently have up to six months to apply for a parental order after birth,** and the surrogate mother has to sign this to confirm she is willingly giving up her parental rights. This gives her a longer time period to reconsider than in the newly proposed Bill, but as in the new Bill, does not mean she automatically gains custody of the child should she refuse to sign the order. A case is currently before the English family courts where a surrogate mother is fighting to gain visitation rights to her own child, conceived using her own egg.
4. **Commissioning parent/s living in the UK are allowed to undertake commercial surrogacy arrangements abroad** and bring a child back into this country, despite commercial surrogacy being illegal here.
5. **Surrogacy agencies in the UK must be 'not for profit', although several employ large numbers of staff; one is even attached to a law firm:** agencies help commissioning couples navigate the legal process required to gain a parental order (both for surrogacy in this country, and those undertaking arrangements abroad), and facilitate introductions. Many of the incentives they use to encourage UK women to become surrogate mothers include vouchers, trips to theme parks for the surrogate mother's existing children, and holidays.
6. **It is not a legal requirement that a woman has had her own children before undertaking a surrogate pregnancy².** This means some women cannot always give informed consent and cannot know what pregnancy and being separated from a child at birth can entail³, physically or emotionally. Our research has uncovered instances of first-time surrogate mothers being left permanently damaged from injuries sustained during childbirth.
7. **Surrogate mothers are permitted to use their own eggs in surrogacy:** meaning at the point of handover to the commissioning parent/s the child, in these cases, is being taken away from its own genetic mother. This contradicts NHS advice on maternal bonding and the importance of attachment in the days following birth. It also fails to recognise the psychological impact on the surrogate mothers existing children, if any, who live with her.
8. **There is no enforceable requirement that ensures a child has an ongoing relationship with its surrogate mother.** Many children born of surrogate mothers, at home or abroad, never see their birth mothers again.
9. **The UK is an outlier in allowing any form of surrogacy to take place at all:** surrogacy is much more strictly limited or completely prohibited in countries such as France, Germany, China, India, Italy, Spain, Portugal. International commercial surrogacy in Ukraine and Georgia looks set to be banned. Commercial surrogacy is illegal across the EU.

The Proposed Bill:

1. **The Bill tips the balance of power away from the surrogate mother towards the commissioning parent/s.** The intention behind the Bill is to make the UK 'altruistic' surrogacy market more attractive than the commercial market

¹ [Number of parents using surrogates in England and Wales quadruples in 10 years - News Centre - University of Kent](https://www.newscentre.uk.ac.uk/news/number-of-parents-using-surrogates-in-england-and-wales-quadruples-in-10-years)

² <https://40wks.com/blog/the-rise-of-surrogacy/>

³ <https://www.dailymail.co.uk/femail/article-12153899/Meet-bride-thrilled-seven-months-pregnant-got-married-couples-baby.html>

abroad, by giving commissioning parents greater rights in law, and greater certainty that the mother cannot assert her parental rights, as these would have been removed at birth. No other form of parenthood permits this.

2. **The Bill reduces the time limit the surrogate mother has to change her mind to just *six weeks* after birth: even if she does change her mind, she is not guaranteed custody of her child.** According to the new Bill, a judge would decide on where the baby was best placed to live. As the baby would have been living with the commissioning couple from birth, or if they are materially far more well off than the surrogate mother, it is unlikely that she would retain legal parentage, let alone obtain custody. The Bill and its supporting documents make no reference to the psychological impact this may have on the child or any surrogate mother who is experiencing regret, in the long term.
3. **The Bill proposes to make the commissioning couple legal parents of the child at birth, meaning its birth mother would never be recognised in law or listed on the birth certificate,** according to the Law Commission's preferred model. This would be the case even where the mother has used her own egg, and the child is genetically, as well as biologically, hers. The proposed introduction of a surrogacy register will record the mother's name, but the child would not be able to access any such identifying information until they reach the age of 18.
4. **The Bill proposes a minimum age of 21 for surrogate mothers, and just 18 for commissioning parents.** We believe this is far too young an age for a woman to be undertaking a pregnancy on behalf of others.
5. **The Bill does not require a surrogate mother to have been pregnant, given birth or completed her own family:** meaning if she has not previously been pregnant or given birth, she cannot give informed consent.
6. **'Expenses,' potentially totalling tens of thousands of pounds, are still permitted to be paid to the surrogate mother:** thus providing a real financial incentive to many women from lower socio-economic backgrounds, and disproving the myth that the UK surrogacy system is genuinely 'altruistic'.
7. **The Bill continues to allow people to bring babies to the UK who have been conceived and carried through commercial surrogacy abroad,** despite significant and well-known problems of exploitation and coercion in the global commercial surrogacy market. This is in contravention of all other UK public policy on undertaking activities abroad which are illegal here, as well as demonstrating a concerning lack of safeguarding towards the infant.
8. **The Bill allows for advertising to attract surrogate mothers,** likely leading to an explosion in numbers of vulnerable and young women from lower socio-economic backgrounds agreeing to undertake the practice out of financial necessity, rather than genuine desire.
9. **The Bill enables surrogacy agencies to become Regulated Surrogacy Organisations (RSOs)** with power to determine which commissioning couple or individual can enter the so-called surrogacy pathway: this is a conflict of interest, as well as giving too much power to organisations which have a financial incentive and ideological commitment to seeing the numbers of surrogate pregnancies rise, and which are not experienced in meeting the ongoing burden of regulatory obligations.
10. **The Law Commission's plans take social workers and CAFCASS out of arrangements completely.** The proposals as written would bring an end to the current practice of CAFCASS assessment before a court hearing on a parental order, putting surrogacy completely at odds with UK adoption legislation and practice.

What are we asking for?

We believe the proposals are a retrograde step for women and children and should not be taken forward. If the law changes, surrogacy in the UK may boom, leaving vulnerable women at risk of exploitation. Over half of all respondents to the Law Commission's consultation called for an outright ban on all forms of surrogacy in the UK⁴: these responses were disregarded.

The time has come for surrogacy law to be tightened. It should be illegal to bring a baby into this country if they have been conceived and carried through a commercial surrogacy arrangement abroad, as is the case across much of the EU. The UK model should be a truly altruistic one, with minimal monies changing hands; this would allow a woman to carry a child for her relative or friend but would not incentivise an arrangement for financial gain between strangers. It should be mandatory in law that commissioning parent/s facilitate ongoing access for the child to its genetic and biological mother/s if desired.

If you would like to meet with us to discuss this briefing, please do not hesitate to get in touch at surrogacyconcern@gmail.com or stopsurrogacynowuk@gmail.com. We would be happy to do so at your convenience.

⁴ <https://nordicmodelnow.org/2023/03/29/most-respondents-to-the-law-commissions-surrogacy-consultation-want-a-total-ban-on-surrogacy-in-the-uk>