



**Law
Commission**
Reforming the law



Scottish Law Commission
promoting law reform



BUILDING FAMILIES THROUGH SURROGACY: A NEW LAW

Summary of Consultation Paper

THIS CONSULTATION

Who are we?	The Law Commission of England and Wales and the Scottish Law Commission are independent bodies established by statute to make recommendations to government to reform the law in England and Wales, and in Scotland.
What are we doing?	Conducting a public consultation on our provisional proposals to reform the law governing surrogacy.
What is it about?	Surrogacy – where a woman becomes pregnant and gives birth to a child for another family.
Why are we consulting?	We are seeking views on our provisional proposals and asking questions. Your views will be carefully considered when we decide on our final recommendations.
Who do we want to hear from?	We are keen to receive comments from as many stakeholders as possible – including those who have been, are, or may be involved in surrogacy arrangements – whether they agree or disagree with our provisional proposals.
What is the deadline?	The consultation closes on 27 September 2019.
What happens next?	After reviewing all responses, we will decide on our final recommendations for law reform, which we will publish in a report, accompanied by a draft bill (legislation) in 2021.

THIS SUMMARY

This Summary does not summarise all of the provisional proposals and questions set out in our detailed Consultation Paper. Instead, it explains what the project is about, provides some context, and then highlights key issues discussed in the Consultation Paper. This Summary only provides an overview of those key issues.

Before responding, you are encouraged to read our full Consultation Paper, or the relevant parts of it. You do not have to respond to all the questions in our Consultation.

References in this Summary are to the chapters of the Consultation Paper.

RESPONDING TO OUR CONSULTATION



The Consultation Paper is available on our websites at <https://www.lawcom.gov.uk/project/surrogacy/> and <https://www.scotlawcom.gov.uk/law-reform/consultations/>

The deadline for responses is 27 September 2019.

Comments may be sent to us using the online response form, available on our websites. Where possible, it would be helpful if this form was used.

Alternatively, comments may be sent:

- (1) by email to surrogacy@lawcommission.gov.uk; or
- (2) by post to Surrogacy Team, Law Commission, 1st Floor, 52 Queen Anne's Gate, London, SW1H 9AG.

(If you send your comments by post, it would be helpful if, whenever possible, you could also send them electronically).

We ask consultees, when providing their responses, if they could avoid including personal identifying information in the text of their response, particularly where this may reveal the identities of other people involved in their surrogacy arrangement.

For further information about how the Law Commissions conduct their consultations, and our policy on the confidentiality of consultees' responses, please see page i of the Consultation Paper.

INTRODUCTION

What is surrogacy?

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

Surrogacy has been around for a very long time. However, the development of surrogacy that does not use the surrogate’s own eggs, has only been possible following the development of in-vitro fertilisation (“IVF”). IVF allows eggs from an intended mother or an egg donor to be used instead of the eggs of the woman who will be the surrogate. As a result, there are now two different forms of surrogacy.

Different forms of surrogacy

Traditional surrogacy (also called “straight” or “partial” surrogacy):

a surrogacy arrangement where the surrogate is genetically related to the child born of the surrogacy arrangement because her own egg is used. Artificial insemination (not sexual intercourse) will be used to conceive the child.

Gestational surrogacy (also called “host” or “full” surrogacy):

a surrogacy arrangement where the surrogate is not genetically related to the child born of the surrogacy arrangement because her eggs have not been used. IVF will be used to conceive the child.

Surrogacy is a way in which people who are unable to carry a baby themselves, can build a family. The intended parents who enter into surrogacy arrangements belong to one of two groups:

- opposite-sex couples, or single women, who experience infertility; or
- same-sex male couples or single men, who by reason of their gender, cannot become pregnant.

Whilst the exact numbers of surrogate births per year is uncertain, they certainly represent a tiny fraction of the total number of live births in the UK each year. Yet, the number of surrogate births continues to grow, and the impact that the law has on all those affected is substantial.

Number of children involved in parental order proceedings in England and Wales



Relatively few parental orders have been granted by the courts in Scotland. In 2018, for example, 15 parental orders were granted.

The surrogacy reform project is being undertaken jointly by the Law Commission of England and Wales, and the Scottish Law Commission. Work began in May 2018 and we expect to publish the report, containing recommendations for reform of the law, in 2021. We anticipate that this will be accompanied by draft legislation that will set out the new law governing surrogacy arrangements in the UK.

