



/guide



Your questions answered

SURROGACY AND PARENTAL ORDERS

This Stowe guide explains what to consider when exploring Surrogacy as a route to parenthood, and the legal implications for birth and intended parents.

We provide a personalised approach to help our clients build or extend their family through surrogacy, whether in the UK or overseas. Building a family can be unpredictable, so we will ensure you have a strong foundation of support to deal with the highs and lows of what is going to be an incredible journey.

The Stowe Family Law surrogacy team will support you with legal advice to ensure you have the information you need to make key decisions and ensure that the necessary documentation is in place and legal formalities complied with.

What is surrogacy?

Surrogacy is where a woman carries and gives birth to a baby for another person or couple.

There are two types of surrogacy:

- 1. Host or gestational surrogacy** - where the eggs of the intended mother or a donor are used and there is no genetic connection between the baby and the surrogate.
- 2. Traditional surrogacy** - when the surrogate also donates her egg.

What is the position regarding surrogacy in the UK?

It is completely legal to enter into a surrogacy arrangement in the UK. Surrogacy Contracts, on the other hand, are unenforceable. It is also unlawful for a third party (such as a solicitor) to negotiate a **Surrogacy Contract**. This means that the foundation of surrogacy arrangements in the UK is trust.

The surrogate mother will always be recognised as the legal mother of any child born through surrogacy, even if she does not have a genetic relationship with the child.

If the surrogate is married, her husband/wife/civil partner will be treated as the child's legal father/second parent in certain circumstances.

Clearly, this is not the aim of a surrogacy arrangement.

If the surrogate is not married there is a choice as to who the second parent is. If no HFEA parenthood forms are signed then the biological father will be the legal father. Alternately, if you are using a HFEA-approved clinic, someone (usually the non-biological father or intended mother) can be nominated as the other legal parent.

What can be done to rectify this situation?

The solution is a **Parental Order**. A Parental Order transfers parental responsibility and legal recognition as the child's parents from the surrogate and her husband/wife/civil partner to the intended parents. The child's birth will be re-registered, so the child will have a new birth certificate which names the intended parents as their parents.

What is the process for a Parental Order in the UK?

Our legal team can guide and support you through every step of the process, from preparing your application to obtaining your surrogate mother's consent and ensuring the strict rules regarding this have been complied with, attending hearings with you and preparing the documents the court requires for those hearings.

What if you cannot apply for a Parental Order?

Our legal team will be able to advise you as to whether they believe this is the case. If it is, there are various other options you may wish to consider and our legal team can explain these to you and help you with any of the alternative applications.

Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit www.stowefamilylaw.co.uk

What happens if your child is born abroad?

Unfortunately, there is no global recognition of surrogacy law, and so even if you are recognised as the legal parents of your child in the country in which he/she is born, under UK law the surrogate and her spouse (if relevant), will remain recognised as your child's parents. This means you will still need to apply for a Parental Order on your return to ensure you have the necessary rights regarding your child in the UK.

What about practical arrangements?

There are various practicalities to consider, such as arrangements during your surrogate's pregnancy. These include communication with her; time spent with her; whether you will be present at the birth; and when she will hand over the child to you. Our legal team can explore these with you.

A key arrangement which could cause issues is payments to the surrogate. Although it is not illegal in the UK to pay a surrogate, the family court will consider any payments made to your surrogate as part of your Parental Order application.

There has always been a misconception that it is illegal to pay a UK surrogate more than 'reasonable expenses', but this isn't true. The payments made are simply a consideration for the judge, who must authorise payments of more than 'reasonable expenses'. This term has never been defined, making this issue tricky for both intended parents and surrogates. The judge considering your application for a Parental Order will want details of the payments you have made to the surrogate so it is important to get advice about payments at any early stage.



guide