

## SURROGACY

### Your Questions Answered

#### What is Surrogacy?

Surrogacy is when a woman carries a baby for another couple or individual. Usually this is because the couple or individual cannot carry a pregnancy for themselves – usually because they are male in a same sex couple or due to health reasons.

There are two different types of surrogacy:

1. Host or gestational – this is where the surrogacy is not genetically linked to the baby conceived. The embryos are either made up by the egg and sperm of the intended parents or the egg or sperm of one of the intended parents plus donor egg or sperm.
2. Straight or traditional surrogacy – this is where the surrogate's own eggs are used, meaning she will have a genetic link with the baby. The intended father's sperm would also be used.

Under UK law, the baby must have a genetic link to one of the intended parents.

#### Who are the legal parents at birth?

Regardless of a genetic link or any agreements that have been made, the surrogate will be deemed the legal mother when the baby is born.

If the surrogate is married or in a civil partnership, her spouse or civil partner will be the father or other legal parent.

If the surrogate is unmarried, it is possible for one of the intended parents to be recognised as a legal parent from birth. Most of the time this

will be the biological father but if the baby is conceived in a UK fertility clinic there is scope to choose the other intended parent (i.e the intended mother or non-biological father if in a same sex couple).

#### What is a parental order?

As the surrogate (and potentially her spouse/civil partner) is deemed the legal parent upon birth, the intended parents must seek a parental order which if granted, will transfer legal parenthood to them.

The legal parenthood of the surrogate (and that of her spouse/civil partner) would come to an end. To obtain a parental order, an application needs to be made to the court after birth. It can be applied for as soon as you have your baby's birth certificate. Once granted, a new birth certificate will be produced. Under UK law, any pre-birth contracts or agreements are not enforceable and so a parental order still needs to be obtained.

To obtain a parental order, certain factors must be shown which Hall Brown can advise you on.

#### Who can apply for a parental order?

The legislation allows for married couples, civil partners, or those in an "enduring family relationship" to apply for a parental order. As of 3 January 2019, parental orders became available to single parents as well as couples, as long as there is a genetic link.

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## **What is the process for obtaining a parental order?**

The timeline for obtaining a parental order is usually 6-12 months. Where you submit your application will depend on whether it is a UK or international surrogacy arrangement. If the child is born in the UK, the application will usually be allocated to a magistrate or a junior judge. If it is an international arrangement or there are other complicating factors, it would usually be allocated to a High Court Judge. The court will appoint a 'parental order reporter' from an organisation known as CAF/CASS (the Children and Family Court Advisory Service) who will interview the intended parents and surrogate and thereafter make recommendations to the court as to whether an order should be made.

The surrogate's formal consent will need to be provided which cannot formally be given until 6 weeks has passed after the birth. You do not however need the surrogate's formal consent at the time of filing your application.

There are usually one or two court hearings, with the final hearing typically treated as a celebratory occasion if the parental order is granted.

## **What is the different between having a surrogate in the UK and overseas?**

Surrogacy is legal in the UK although is an altruistic and non-commercial model. This means that it is illegal to advertise for or pay a fee to a surrogate (over and above "reasonable expenses" as below).

These laws mean that it is sometimes difficult for intended parents to find a surrogate in the UK as there are less surrogates. This means intended parents sometimes look overseas at countries where surrogacy is more common and highly regulated. The most common destinations to find a surrogate are the USA, Canada, Greece, Georgia and Ukraine.

If you choose to use a surrogate overseas, immigration advice is essential. At Hall Brown we work with immigration specialists who we can put you in touch with right at the outset so you know exactly what to expect and to ensure you can bring your baby home as quickly as possible.

If you opt for an international arrangement, it is also really important that you appoint an attorney/lawyer specialising in the surrogacy (and often immigration) laws of that country. However, even if orders are obtained in other countries (such as a US parentage order), this will not be recognised in the UK. You therefore still need to obtain a parental order if your intention is to live in the UK.

## **How much does it cost?**

This largely depends on where your surrogate is. In the UK, as it is not a commercial model, you are only allowed to pay "reasonable expenses" to your surrogate. This is usually considered to be in region of £12,000 - £15,000. When considering the parental order, the court will need to authorise any payment made over and above the expenses the surrogate has reasonably incurred. However, in the US for example, where there is a commercial model, you can expect to pay in the region of £150,000. In addition, you will also need to consider clinic and legal fees.

At Hall Brown we can discuss the financial implications with you and point you in the right direction of agencies and funding providers who will be able to give a clear idea of likely costs.

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## What if the surrogate withdraws consent?

This is understandably a common concern of intended parents. However, a surrogate withdrawing her consent is extremely rare in practice. In order for the parental order to be granted, the consent of the surrogate is required. If a surrogate withdraws her consent, she (and potentially her spouse or civil partner) will potentially remain the child's legal parents. If it is not possible for the intended parent(s) to satisfy the statutory criteria for a Parental Order, Hall Brown can advise you on alternative routes to acquire parental responsibility.

## Where do I start?

Key information can be found on the government website which is a great place to start:-

<https://www.gov.uk/legal-rights-when-using-surrogates-and-donors>

<https://www.gov.uk/government/publications/having-a-child-through-surrogacy>

<https://www.gov.uk/legal-rights-when-using-surrogates-and-donors/become-the-childs-legal-parent>

Joining a non-for-profit organisation such as My Surrogacy Journey, COTS, Brilliant Beginnings and Surrogacy UK, especially if you wish to find a UK based surrogate, is a fantastic first port of call and they will help support both you and your surrogate throughout your journey.

It is essential to obtain legal advice from the outset of your surrogacy journey.

## How can Hall Brown help you:

- Hall Brown offer expert advice all essential legal issues associated with starting or adding to a family via surrogacy.
- We can provide knowledge, reassurance and practical help throughout to bring about an outcome which is in the best interests of you and your child.

## What Next?

Please do get in touch with our specialist surrogacy team for a non-obligation discussion about your plans and we would be delighted to assist you.

## Speak to Katie Welton-Dillon Today Head of Children Family Law Team

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