

Surrogacy and Legal parenthood FAQs

1. Introduction

These questions are written to offer guidance to surrogates and couples commissioning surrogacy arrangements who intend on being the child's legal parents.

They give general information about common situations but they may not apply to every particular situation. We strongly advise surrogates and intended parents to seek legal advice and to ensure they fully understand the implications before entering into a surrogacy arrangement.

2. For the surrogate

I am a surrogate and I am married/in a civil partnership. Who will be the legal parents of the child on birth?

You will be the legal mother of the child unless, or until, parenthood is transferred to the intended mother through a Parental Order or adoption after the birth of the child. This is because, by law, the woman who gives birth to a child is always treated as the legal mother and will have parental responsibility.

Your spouse or civil partner will automatically be recognised as the legal parent of the child at birth (ie, there is a presumption in favour of parenthood). In Scotland the law sets out this presumption. All those involved should seek specific advice about the how the law in place in their country applies to their circumstances. If your spouse or partner does not wish to be the legal parent, he or she will need to demonstrate to the court that there is a factual reason for not consenting to your treatment that satisfies the law. This could, for example, be evidence to show that you and your spouse or civil partner have separated.

One way to record your spouse or civil partner's lack of consent is by completing the 'LC Stating your spouse or civil partner's lack of consent' form, provided by the clinic where you have treatment. However, this by itself will not automatically remove their status as the legal father or parent of any child born from your treatment. Please ask your clinic about the relevant form.

Parenthood can be a complex matter legally and some aspects can vary from one family situation to another. It is ultimately a matter for the Family Court (or in Scotland, the Courts) to determine.

2.1. [I am a surrogate and I am not married/in a civil partnership. Will one of the intended parents commissioning the surrogacy arrangement be the second legal parent of the child on birth \(ie, before a Parental Order has been granted\)?](#)

If the intended father's sperm is used he will automatically be the legal parent if no one else has been nominated as a legal parent and will acquire parental responsibility when registered on the birth certificate. Neither you nor the intended biological father will need to provide consent.

Alternatively, an intended father who is not the biological father (eg, an intended father using donor sperm or the male partner of the biological father) or an intended female parent can be nominated as the child's second legal parent and acquire parental responsibility when registered on the birth certificate. Both you and the nominated intended parent would need to consent to this prior to sperm, egg or embryo transfer.

You will need to complete the 'SWP Your consent (as a surrogate) nominating an intended parent to be the legal parent' form and the nominated intended parent (where it is not the biological father) will need to complete the 'SPP Your consent to being the legal parent in surrogacy' form. Please ask your clinic about how to provide consent.

The above applies both if you are single or if you have a partner (but are not married or in a civil partnership).

2.2. I am a surrogate. Can I withhold my consent to one of the intended parents commissioning the surrogacy arrangement being the second legal parent of the child when born, until a Parental Order is granted?

No. If you are not married or in a civil partnership and the intended father is the biological father, he will automatically be recognised as the child's legal father at common law (providing no other person has been nominated as a legal parent). He will acquire parental responsibility of the child if he is registered on the child's birth certificate.

Your consent is required for an intended father who is not the biological father or an intended female parent to be nominated as the second legal parent (providing you are not married or in a civil partnership). He or she will acquire parental responsibility of the child upon birth registration.

2.3. Can both of the intended parents be the child's legal parents on birth, prior to a Parental Order being granted?

No, this is not possible. Only two people can be the legal parents of the child at one given time. You will automatically be the child's legal mother as UK law always considers the woman who gives birth to be that child's legal parent. This remains the case until parenthood is transferred to the intended parents through a Parental Order or adoption after the birth of the child.

If you are not married/in a civil partnership, it is possible for one of the intended legal parents commissioning the surrogacy to be the child's second legal parent.

2.4. What does the Parental Order process involve?

For a Parental Order to be made, you must agree to it unconditionally and with full understanding of what is involved. Your consent to a Parental Order is only valid if it is given at least six weeks and no more than six months after the birth. Refusing to consent to a Parental Order will not extinguish any parental rights

that are in place at the time – for example if the intended father is the legal father - and the legal position is likely to be complex.

3. For the intended parents commissioning a surrogacy arrangement

We are commissioning a surrogacy arrangement and intend on being the legal parents of the resulting child following the granting of a Parental Order. Prior to the Parental Order, who will be the child's legal parents?

The surrogate will be the legal mother of the child. This is because, by law, the woman who gives birth is always treated as the legal mother.

If the surrogate is married or in a civil partnership her spouse or civil partner will automatically be recognised as the legal parent of the child at birth (ie, there is a presumption in favour of parenthood). In Scotland the law sets out this presumption. All those involved should seek specific advice about the how the law in place in their country applies to their circumstances.

If the surrogate's spouse or partner does not wish to be the legal parent, he or she will need to demonstrate to the court that there is a factual reason for not consenting to the treatment that satisfies the law. This could, for example, be evidence to show that the surrogate and her spouse or civil partner have separated.

If the surrogate is not married/in a civil partnership, the biological intended father will automatically be the child's legal father on birth (providing no other person has been nominated as the legal parent) and will acquire parental responsibility when registered on the birth certificate. No consents are required to be given.

Alternatively, an intended father who is not the biological father (eg, an intended father using donor sperm or the male partner of the biological father) or an intended female parent can be nominated as the child's second legal parent and will acquire parental responsibility when registered on the birth certificate.

Both the surrogate and the nominated intended parent will need to consent to this prior to sperm, egg or embryo transfer. You will need to complete the 'SPP Your consent to being the legal parent in surrogacy' form and the surrogate will need to complete the 'SWP Your consent (as a surrogate) nominating an intended parent to be the legal parent' form. Please ask your clinic about how to provide consent.

3.1. Can both of us become the legal parent of the child at birth?

No, you cannot both be the legal parent until a Parental Order has been granted. This is because the surrogate will be the legal mother of the child on birth and there can only be two legal parents at one given time.

We are commissioning a surrogacy arrangement and will be providing sperm and/or eggs for the surrogacy treatment, what screening is required?

If you are providing sperm or eggs for a surrogacy arrangement you will be required to undergo certain screening tests in order to reduce the risk of passing on diseases to the surrogate and to protect the health of any resulting child.

If you are providing sperm for the surrogacy treatment, your sperm will need to be screened for infections like HIV and Hepatitis B virus and this may require a 6 month quarantine period.

3.2. We are in a male same sex relationship and commissioning a surrogacy arrangement. Can either of us become the second legal parent of the child on birth?

Yes, either of you can become the second legal parent of the child on birth. The intended biological father will automatically be recognised as the child's legal father on birth (providing the surrogate is not married or in a civil partnership and no other person has been nominated to being the second legal parent) and will acquire parental responsibility when registered on the birth certificate.

Alternatively, the partner of the intended biological father can be the nominated legal parent if the relevant conditions have been met and both he and the surrogate consent to this prior to sperm, egg or embryo transfer. The partner of the intended biological father will need to complete the 'SPP Your consent to being the legal parent in surrogacy' form and the surrogate will need to complete the 'SWP Your consent (as a surrogate) nominating an intended parent to be the legal parent' form. Please ask your clinic about how to provide consent.

3.3. We are in a lesbian relationship and commissioning a surrogacy arrangement. Can either of us become the second legal parent of the child on birth?

Yes, one of you can be the nominated second legal parent and acquire parental responsibility when registered on the birth certificate if the relevant conditions have been met and both you and the surrogate consent to this prior to sperm, egg or embryo transfer.

One of you will need to complete the 'SPP Your consent to being the legal parent in surrogacy' form and the surrogate will need to complete the 'SWP Your consent (as a surrogate) nominating an intended parent to be the legal parent' form. Please ask your clinic about how to provide consent.

3.4. Will we need to show any evidence of who are the child's legal parents when we register the child's birth?

There is generally no need to show evidence as the registrar will ask you about the child's parenthood in order to decide who should be registered as the parents on the child's birth certificate. Evidence will need to be shown if it is not clear from the information given to the registrar who should be regarded as the parents on the child's birth certificate (eg, where parents are not married or in a civil partnership, or where there is a dispute regarding parenthood).

3.5. What are the conditions for applying for a Parental Order?

For a couple (married, civil partners or living together as partners) to be able to apply for a parental order, one or both of the intended parents must be a gamete provider for the child. Where the intended parent is applying for a parental order alone, the intended parent must be a gamete provider for the child. Other conditions also apply, and centres should advise those involved in surrogacy arrangement to seek their own legal advice to ensure they will be able to secure their family's legal status after the child is born.

3.6. Can the surrogate refuse to agree to a Parental Order?

Yes. For a Parental Order to be made, the surrogate must agree to it unconditionally and with full understanding of what is involved. The surrogate's consent to a Parental Order is only valid if it is given at least six weeks and no more than six months after the birth. Refusing to consent to a Parental Order will

not extinguish any parental rights that are in place at the time – for example if the intended father is the legal father - and the legal position is likely to be complex.

3.7. What is the difference between being the legal parent of a child or having parental responsibility for a child?

A person recognised as the legal parent of a child may not automatically have parental responsibility. A person will acquire parental responsibility (or in Scotland, parental responsibility and rights) for a child when registered on the child's birth certificate. The woman who gives birth to a child automatically has parental responsibility.

Legal parenthood gives a lifelong connection between a parent and a child, and affects things like nationality, inheritance and financial responsibility. A person with parental responsibility has the authority to decide about the care of the child for example for medical treatment and education.

3.8. Some things to consider regarding surrogacy overseas

If people are seeking surrogacy treatment overseas, the legal and immigration implications are complex. You should seek your own legal advice.

The Foreign and Commonwealth Office published guidance on the immigration procedures for UK parents who have children born through surrogacy abroad.

You may also wish to contact the UK Border Agency for further information.