

FREETHS

Family Law

Surrogacy arrangements

The use of surrogacy arrangements is highly restricted. In most countries, it is completely illegal. In the UK, it is permitted. However, it is illegal to pay a surrogate, advertise that you are seeking a surrogate, or to advertise your services as a surrogate. Only altruistic, not-for-profit surrogacy is allowed. Written agreements between surrogates and intended parents are not binding or enforceable.

If you are using a surrogacy arrangement, you will need to go through a court process to acquire legal parenthood for your new child. Legal parenthood determines important things like your child's nationality and their right to inherit your assets. It also makes you financially responsible for your child. Only a maximum of two people can hold legal parenthood for a child.

The woman who carries and gives birth to the child will always automatically hold legal parenthood. This means that, as the child's birth mother, the surrogate will remain the child's legal parent until the intended parents obtain a court order, known as a parental order. If the surrogate is married or in a civil partnership, then in most circumstances her spouse or civil partner will be the child's second legal parent until the parental order is in place. The parental order gives legal parenthood to the intended parents and permanently ends the legal parenthood of the surrogate and her spouse or civil partner.

As well as legal parenthood, a parental order will give what is known as 'parental responsibility'. Parental responsibility is defined as "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and to its property." Parental responsibility includes the right to be involved in making choices about a child's education, healthcare and day to day decisions about their upbringing.

So, what are the requirements for being granted a parental order?

1. You must be a couple. Single parents cannot obtain parental orders. The courts have declared that the

law as it stands is discriminatory and infringes human rights but at the time of writing the government has not made proposals to change it.

2. The surrogate must not have been paid to act as surrogate, beyond reimbursement of her 'reasonable expenses'. The courts will often be quite generous in interpreting what reasonable expenses are, but you still need to be extremely careful. It is sensible to keep a detailed record of every payment made to the surrogate and what it was for.
3. The surrogate (and her spouse or civil partner if relevant) must consent to legal parenthood being transferred to you. It is best to encourage the surrogate to take legal advice of her own and to be able to produce evidence that she understands the implications of giving consent.
4. At least one of you must be the biological parent of the child. You cannot obtain a parental order if the egg and sperm used in the conception of the child were both donated.
5. The child must have its home with you when the application is made and when the order is granted, and at least one of you must be domiciled in the UK.
6. You must apply to a court for the parental order within six months of the child's birth.

If you are planning to enter into a surrogacy arrangement with a surrogate outside the UK, you will also need to ensure that you will be able to secure your child's nationality and immigration status when you bring them home to the UK. At Freeths, we have specialist immigration lawyers who can help with this. However, please do note that you may also need to consult a lawyer in the country where the surrogacy arrangement is taking place, to ensure that you comply with laws and regulations there.

If we can help you with any of these issues please call to speak with Rachael Oakes, the head of our family team on 0845 128 6960 or at rachael.oakes@freeths.co.uk