

Law Commission Consultation: Building families through surrogacy: a new law

Response on behalf of the Christian Medical Fellowship

The Christian Medical Fellowship (CMF) was founded in 1949 and is an interdenominational organisation with over 5,000 British doctor members in all branches of medicine, and around 1,000 medical student members. We are the UK's largest faith-based group of health professionals.

Introduction

CMF is opposed to surrogacy in principle. This flows directly from our view of marriage as a lifelong and exclusive commitment between one man and one woman, and the only appropriate context for sex. We see marriage as the bedrock of a healthy society. Fragmentation of marriage and parenting is, sadly, sometimes unavoidable, but should not be pre-planned.

The intrusion of a third party into that exclusive relationship, in the form of a gamete donor or surrogate, is something that in principle we cannot support. Coupling gamete donation with surrogacy means that the child will not only be separated from its birth mother but also from one or both of its genetic parents. The testimonies of those who have been conceived through donor gametes¹ should warn us about the potential impact of linking surrogacy with gamete-donation. We are not unmindful of the pain of infertility but consider treatments that rely on such third-party involvement to be 'a bridge too far' and not in the overall best interests of society. We are not opposed to using IVF to enable a married couple to conceive using their own gametes.

That said, our members are practising medicine in a society and culture that for the most part does not share these views. They care for patients with a range of different worldviews and seek to provide them with non-directive, non-judgmental but well-informed advice. In that spirit we are pleased to participate in this important consultation.

CMF would like to thank the Commission for the clear and comprehensive consultation documents that support this project, and the 'tone' they carry. We appreciate the extensive groundwork that has been done and the careful reasoning behind the changes being proposed. We also appreciate your readiness not to come to conclusions in some areas but to present arguments 'for' and 'against', leaving it to correspondents to decide.

Executive Summary

CMF notes that the Consultation Paper states: *"Our project does not seek to examine whether or not surrogacy should be allowed. Instead, we take as our starting point that surrogacy is an accepted*

¹ For example, Alexina McWhinnie, ed., *Who Am I? Experiences of Donor Conception* (Leamington Spa: Idreos Educational Trust, 2006).

form of building a family".² We regret that the consultation does not re-examine the ethical acceptability of surrogacy, especially in the light of the fact that the practice is completely prohibited in many European countries, such as France, Germany, Italy, Spain, Portugal and Bulgaria. No evidence base for stating that surrogacy is 'an accepted form of building a family' is provided other than a YouGov poll.³

Even this poll demonstrated only qualified support (59% approval) for the situation where a surrogate would volunteer to carry another couple's fertilised embryo in her womb right through pregnancy to birth, even though she has no biological connection to the child, where that couple cannot otherwise have children of their own. The approval rating dropped where the process was commercialised and dropped further still (to only 40%) in scenarios where married gay male couples used a paid surrogate to carry through pregnancy an egg from a female donor fertilised by one of them through IVF.

In our opinion, this falls well short of a sufficient evidence base to support the dogmatic statement that surrogacy is 'an accepted form of building a family'. As such, the starting point of the project is unreliable, based as it is on an unsupported assumption.

We are also concerned that the proposed amendments take into account the wishes of commissioning parents (and, to some extent, surrogates), but that the interests of the children who are being brought into existence through such arrangements are not prioritised.

Ethical concerns

Broadly, our ethical concerns relate to the welfare of two parties – the surrogate woman and the resulting child.

The Surrogate

1. Detachment

The process of surrogacy asks of a woman that she respond unnaturally. She is asked to resist her natural maternal instinct to bond with her developing baby, to 'deny' the natural affection she feels in the knowledge that she will have to 'give up' her baby. This has long been considered to the detriment of pregnancy.⁴ Whilst it is accepted that the reactions of surrogate mothers to the loss of their children will vary, it is clear that a number of them struggle with feelings of guilt and depression years later. The loss has been compared to that experienced by women suffering a still-birth.⁵ It is our contention that the proposed amendments to the law will make such outcomes more common, by increasing the number of surrogate pregnancies.

Gestational surrogacy should not be compared to a kind of baby-sitting exercise over a nine-month period. To do so would ignore the deep psychological bonding that the surrogate woman normally develops with her unborn child, a bond that has to be broken when her child is handed over. Even

² Summary of Consultation Paper: *Building Families Through Surrogacy: A New Law*. Law Commission and Scottish Law Commission, 2019, p 4.

³http://cdn.yougov.com/cumulus_uploads/document/ubj8or4iat/InternalResults_140805_Surrogate_Mother.pdf

⁴ Department of Health & Social Security, Report of the Committee of Inquiry into Human Fertilisation and Embryology, 1984, London: Her Majesty's Stationery Office, p.44-45.

⁵ D. Gareth Jones, *Manufacturing Humans*, Leicester: Inter-Varsity Press, 1987, p. 206.

where the arrangement has been entered into on a commercial basis, this can prove a painful and harmful experience for the surrogate.

Previously, this was considered sufficient reason never legally to force a woman to relinquish her child against her will.⁶ Currently, UK law recognises the birth mother as the legal parent. We see no evidence base in the new proposals to justify a change in this stance.

2. Commodification and Exploitation

As noted in the Brazier report, payment increases the risk of exploitation if it constitutes an inducement to participate in an activity whose degree of risk the surrogate cannot fully understand or predict.⁷ We agree with the Warnock Committee (1984) who believed that *'even in compelling medical circumstances the danger of exploitation of one human being by another appears to the majority of us far to outweigh the potential benefits, in almost every case. That people should treat others as means to their own ends, however desirable the consequences, must always be liable to moral objection.'*⁸

As noted in your consultation paper, poor women could effectively be coerced by the legislation to 'bear children for others in order to augment their family income'.⁹ In such settings, the risk is that surrogacy would operate as an exploitative market – the exchange of payment for a child - in a way analogous to that which has characterised the acquisition of organs for transplantation from poor communities. As a result, women become 'service providers', wombs are 'instrumentalised' and children commodified - child-bearing becomes a business transaction, dislocated from loving relationships and family life.

This is already the state of affairs in some poorer communities around the globe. It has long been recognised by authorities in India that their currently unregulated system of surrogacy has led to widespread abuse and exploitation. India legalised commercial surrogacy in 2002 but, after a number of scandals, banned it in 2018 for foreigners. It is striking that a country which has experienced first-hand the devastating effects of commercial surrogacy has taken such radical steps to end it, in order to protect impoverished and vulnerable women from exploitation.

Nonetheless, surrogacy 'tourism' continues. Recently, a bill banning commercial surrogacy completely has passed the lower house of the Indian Parliament.¹⁰ If it passes the upper house, only altruistic surrogacy will be permitted, and that only under strict conditions.

The Swedish journalist, Kajsa Ekman, asks *"how can we justify a situation in which wealthy people use poor people as breeders, inject them full of hormones, take children away from them and leave*

⁶ Department of Health & Social Security, Report of the Committee of Inquiry into Human Fertilisation and Embryology, 1984, London: Her Majesty's Stationery Office, p.44-45.

⁷ Surrogacy: Review for Health Ministers of Current Arrangements for Payments and Regulation (October 1998) Cm 4068 para 3.1.1.

⁸https://www.bioethics.org/iceb/documentos/Warnock_Report_of_the_Committee_of_Inquiry_into_Human_Fertilisation_and_Embryology_1984.pdf

⁹ L Hill, "Exploitation" (1993 – 1994) 79 Cornell Law Review 631, 638 to 639.

¹⁰ <https://www.deccanherald.com/national/national-politics/ls-takes-up-surrogacy-bill-752226.html> (visited 12.08.2019)

pocket money in exchange."¹¹ The answer given in justification is, of course, that Indian women should have the freedom to choose whether or not to undertake a surrogate pregnancy and thereby improve their economic standing. CMF would contend that grinding poverty precludes a truly free choice for such women; if there is no other way to buy essential medicines or to be able to send your child to school than by renting out your womb, that choice is coerced not free. In practice, the system is unregulated, corruption thrives, so-called surrogate agents make fortunes and the women who bear the risks of pregnancy and childbirth in developing nations are cruelly exploited.

The Child

1. Parental responsibility

CMF welcomes the Law Commission's review of the issue of legal parentage of children born as a result of a surrogacy arrangement. Currently, as many as six people may claim parental rights – the surrogate mother and (if she has one) her partner, the egg and sperm donors (where 'double-donated' gametes are used) and the 'commissioning' couple.

Currently, the rights of the surrogate mother are protected – she is the legal parent at birth and may choose to keep the child. The commissioning couple (or, from 2018, single person) may apply for a parental order to transfer the status of parenthood from surrogate to themselves six weeks after the birth, though the process invariably takes longer – often nearer six months.

The advantage of the present system is the time that it gives the surrogate woman to make a decision confirming the original arrangement, time to come to terms with releasing the baby that she has carried and bonded with over the course of her pregnancy and, of course, time to conclude that she does not wish to part with 'her' baby.

CMF believes that the present system, whilst it leaves the commissioning couple vulnerable to crushing disappointment, rightly prioritises the welfare of the child and its relationship with the woman who has borne it. We do not believe that the commissioning couple's interests should override that priority, or that they have an inalienable 'right' to a child. We cannot therefore agree with the review's recommendations that the commissioning parents should become legal parents at birth, unless the surrogate objects. We think it unsurprising that a surrogate mother might change her mind over the course of a pregnancy and that therefore a sufficient period for unhurried reflection following the birth should be 'built in' to any prior agreement, during which she may decide to keep the baby without penalty. A period of six weeks seems unrealistic; we would recommend a minimum period of three months before the process of legal transfer is begun. If she has been compensated for expenses during the pregnancy, then these should be repaid if she elects to keep the child.

2. Disputed 'ownership'

With so many potential actors in a surrogacy arrangement, the risk of disagreement leading to breakdown of the process is real. For example, when the child born to the surrogate is disabled and the commissioning parents refuse to accept the child. Or when the commissioning parents separate

¹¹ Ekman, K. E. 2014. Being and being bought: Prostitution, surrogacy and the split self. Victoria: Spinifex Press. p.150. Mentioned in: Clara Watson, Womb Rentals and Baby-Selling: Does Surrogacy Undermine the Human Dignity and Rights of the Surrogate Mother and Child? Journal, The New Bioethics, Volume 22, 2016 - Issue 3, pp. 212-228 (p. 220).

and commence divorce proceedings during the pregnancy and neither accepts parental responsibility following the birth. Would legally-binding surrogacy arrangements force unwilling commissioning parents to meet their obligations when circumstances have changed so drastically? Will commissioning parents accept some form of 'assessment' for their suitability and stability as potential parents as part of the initial setting-up process?

3. Competing interests

Clearly, it is in the best interests of the child to be welcomed into a loving and stable home. Parenting, by its very nature is self-sacrificial. Children are not commodities, to be refused or returned if some flaw is discovered. Surrogacy arrangements, by their nature, prioritise the interests of the commissioning parent(s). The question is: whose interests take precedence in surrogacy arrangements - the unseen child or the paying parent?

CMF is concerned that the increasingly commercial environment that would surround surrogacy were the review's recommendations to be followed, would not favour the interests of the child.

4. Confused and damaged identity

Everyone wants to know where they came from, who their parents were – it is central to developing a healthy sense of personal identity and security. A child born to a surrogate woman may have number of people in a parental role, including the commissioning parent(s), the surrogate parent (and possibly her partner) and even the donors of any egg or sperm used in the process of their conception. This can be a perplexing and confusing picture for a child to have to grapple with.

Such a child may struggle psychologically to come to terms with their beginnings. They may wish to get to know and even develop a relationship with their surrogate mother as they grow up, realising that without her they would not exist. Where those arrangements are international, the possibility of developing such a link may prove impossible.

Where links to a surrogate parent can be established, the relational bonds may grow to be significant and potentially harmful to the child, who feels torn between affection for his or her gestational parent and loyalty to his or her commissioning parent(s).

In the case of commercial surrogacy arrangements, children may be harmed by the discovery that their existence owes itself to a legal/monetary transaction, that their value has had a price put on it.¹²

Taken together, these ethical and practical concerns strengthen our conviction that surrogacy should be completely prohibited, as it is in many other European jurisdictions. We respectfully request the Law Commission to re-visit the questions of the ethical acceptability of surrogacy and of the (unsupported) notion that surrogacy is a widely accepted means of building family.

If surrogacy is permitted at all, then it should not be commercial. No payment should be permitted beyond the reimbursement of justifiable, pre-agreed and independently-scrutinised expenses.

Question 1: We invite consultees' views as to whether, in England and Wales:

¹² Clara Watson, Womb Rentals and Baby-Selling: Does Surrogacy Undermine the Human Dignity and Rights of the Surrogate Mother and Child? *Journal, The New Bioethics*, Volume 22, 2016 - Issue 3, pp. 212-228.

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court;
YES
- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.
N/A

Question 2: We invite consultees' views as to whether, in respect of England and Wales:

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; **Allocated upwards**

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate. **Circuit Judges**

Question 4:

We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree? **NO**

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

Question 7:

In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

No. We do not believe it is in the best interests of either the child or the surrogate mother to enter into a binding agreement, before the child is conceived, that would make the commissioning parents the legal parents from birth, for the reasons stated in our executive summary.

Question 8:

We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree? **Yes.**

We invite consultees' views as to what the length of that specified period should be: whether 100 years or another period. **100 years**

Question 9:

We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes. We cannot support the use of donated gametes in surrogacy.

Question 10:

We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

We do not support the use of donated gametes in surrogacy.

Question 11: We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

No. We do not believe the intended parents should acquire legal parenthood at birth. The surrogate should retain legal parenthood, as at present. There should be an adequate period (we propose three months) of time during which the surrogate mother can reflect and receive non-directive counsel if she requests, before agreeing to transfer legal parenthood to the commissioning parents. It would be wrong to place the burden upon the surrogate to object, especially within so short a time frame, when her emotions may be variable and her energy levels low.

Question 12:

We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree? **Yes.**

Question 13: We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree? **No. This favours the intended parents in that the surrogate is only asked to provide positive consent in the absence of the commissioning parents' declaration, a declaration that is almost certain to be made. Also, the intended parents do not have the skills and training to assess capacity. The proposed period of time during which the surrogate can object is short – it may well be that the surrogate woman is not in a sufficiently stable emotional state to provide fully-informed and reliable consent.**

Question 14: We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

CMF is opposed in principle to surrogacy, but if the Commission's recommendations are accepted then our answer to this question is 'yes', subject to a sufficiently robust regulatory process.

Question 15:

We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

No. We believe that under these circumstances the surrogate's spouse should be a legal parent, not least because they will be the co-parent in practice.

We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

Yes

Question 16: We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree? **No. Following a stillbirth, the surrogate cannot be expected to make fully 'safe' decisions during such a short period; her judgment will inevitably be affected by, for example, grief, misplaced guilt or blame. The surrogate might well feel that by the stillborn child being registered to her, her investment in the child's 'unseen' life is recognised and her grief made easier.**

We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree? **Yes, provided she can also withhold consent and that her capacity to decide either way is deemed competent by a qualified professional.**

Question 17:

We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the

registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree? **Yes, but subject to the same caveat as in the answer to Q16 above**

Question 18:

For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Yes

Question 19:

We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period. Do consultees agree?

No. The surrogate should be registered as the parent, subject to her consent

We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

(1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:

- (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent;
- or

(2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

Question 20:

We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

(1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;

(2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and

(3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court. Do consultees agree?

Yes

Question 21:

We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

We cannot support a three-parent model, even on a temporary basis

Question 22: We invite consultees' views:

(1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and

(2) if so, as to whether should this oversight be:

(a) administrative, or

(b) judicial.

We do not support the acquisition by the commissioning parents of legal parenthood at birth. If the new pathway comes into force, we would recommend judicial oversight of the process

Question 23: In respect of England and Wales, we invite consultees' views as to:

(1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and

(2) if so, as to what those additional factors should be.

Question 24: In respect of England and Wales, we invite consultees' views:

(1) as to whether the checklist, contained in section 1(4) of the Adoption and Children Act 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and

(2) what those additional factors should be.

Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Question 26: We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

Question 27: We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

No. The surrogate should retain legal parenthood until such time as she freely chooses to cede that right to the commissioning parents. If she has handed over the child to the intended parents upon its birth, but then quickly regrets the decision, she will be unfairly hampered in exercising her right to object if legal parenthood has already passed to the intended (and presently caring) parents

Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Yes. But we also stress that the period during which she can object is, in our opinion, too short for her decision to be considered reliable and safe.

Question 29: For all surrogacy arrangements, we invite consultees' views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and
- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

We do not favour the notion of shared parental responsibility. Responsibility for care should rest with the surrogate parent until legal parenthood is ceded. Care should not be 'subcontracted' to the intended parents before legal parenthood responsibility.

Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

No. CMF does not support surrogacy in principle. Where such arrangements do occur, we believe the surrogate should enjoy legal parenthood responsibilities and privileges unless and until she decides to cede those to commissioning parents (within an agreed but not unduly limited time period of, say, three months). The new pathway affords little enough time to the surrogate to change her mind. The psychological effects of relinquishment for both the surrogate mother and her child are significant. This is even more the case where there is a genetic link between the surrogate and her child.

Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Question 32:

- (1) We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.
- (2) We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

No. CMF believes that the current arrangements for surrogacy should not be changed. We believe that the new pathway offers insufficient protection to surrogate mothers. This would equally apply to independent surrogacy arrangements being brought within its scope.

Question 33: We provisionally propose that:

- 1) there should be regulated surrogacy organisations;

Do consultees agree?

We do not support surrogacy in principle. However, if it is to be permitted then it must be properly regulated. We propose that surrogacy arrangements should fall to the state to regulate, either through local authorities, the NHS or another government body. The welfare of the surrogate, the child and the intended parents should mean that responsibility for regulation is not subcontracted to commercial agencies. There should be no place for commercial arrangements but an administration fee, paid for by the intended parents, should be expected.

- 2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

Statutory arrangements should be in place to safeguard vulnerable people. The responsibility for regulating surrogacy arrangements should not be outsourced to private organisations. There should be a national standard and the means of regularly assessing compliance at the local level. Local statistics should be fed back into national databases, for ongoing development and improvement purposes.

Question 34: We provisionally propose that the person responsible must be responsible for (please tick as many as you agree with):

Representing the organisation to, and liaising with, the regulator;

managing the regulated surrogacy organisation with sufficient care, competence and skill;

ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;

training any staff, including that of the person responsible; and

providing data to the regulator and to such other person as required by law.

We invite consultees to identify any other responsibilities which a responsible individual should have.

Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Yes

Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

They must be licensed, registered and regularly assessed. They must keep accurate data, and this should be sent to national databases.

Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

Yes

Question 37a: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Yes. But we would recommend that there be no 'outside' pathway.

Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Withdrawal of license and removal of 'fitness to practice' registered status.

Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

No. The HFEA is a non-governmental, independently-minded organisation. We note that the HFEA has a history of closeness with those it is supposed to regulate such that it has become virtually an advocate for the sector. CMF would have no confidence in HFEA to regulate a surrogacy service competently.

If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

See above, under Q.33

Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

No.

Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No. Surrogacy arranging should not be a commercial activity. A nationally agreed, standard and reasonable fee, payable by intended parents, to cover costs, may be charged, but not so high as to attract commercial interest.

Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No. A market in surrogacy arranging is in the best interests of profit-making commercial organisations but not their clients. The ban should remain.

Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Yes

Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Question 47: We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors. Do consultees agree?

Yes

We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

No. The HFEA would not command CMF's confidence. Yes, to the information it is proposed to collect

Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Yes

Question 49: We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request. Do consultees agree?

Yes

We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented; **No**
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or **Yes**
- (3) in any other circumstances.

Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Yes

Question 51: We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so. Do consultees agree?

Yes

We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

Yes

Question 52: We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or **Yes**
- (2) if they are not genetically related through the surrogate. **Yes**

Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent, who is not a party to the application for a parental order, should be recorded in the register.

No

Question 54: We provisionally propose that the six months time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

CMF believes that the present arrangement should not be changed

Question 55: We provisionally propose that:

(1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

Do consultees agree?

(2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:

(a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or

(b) following a determination by the court that the child should live with the intended parents; and

(3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

CMF's concern would be that if the surrogate was temporarily indisposed and (with or without her agreement) the child was living with the intended parents, then the surrogate would likely lose the right to raise her child if she later recovered.

Question 56: We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man. Do consultees agree?

Yes. CMF believes that international surrogacy arrangements should be prohibited.

We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

A minimum qualifying period of three years habitual residence

Question 57: We invite consultees' views on whether:

(1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or

(2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

We believe the requirements should not be reformed

Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

No. CMF is opposed in principle to surrogacy. The surrogate should be the legal parent at birth and until she cedes that right to intended parents after sufficient time for reflection and counsel has elapsed. Yes, the intended parents should declare their intent that the child's home should be with them.

Question 59: We provisionally propose that the new pathway:

(1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but

(2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

No.

We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

No. We do not support surrogacy that involves the use of donor gametes.

Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

No. CMF does not support the use of donor gametes in surrogacy. We also note the inconsistency in requiring at least one parent to contribute gametes in international surrogacy arrangements but not in domestic situations.

Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

CMF is opposed to surrogacy in principle and also to the intrusion of third parties into the marriage relationship through the use of donor gametes. The consultation document states that 'there are strong arguments that a genetic link should not be required.' However, it does not cite any evidence in support of this statement from academic journals, without which the statement is open to question. CMF would be interested to know the grounds on which such a confident statement is founded.

Question 62:

We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

CMF does not accept the notion of a 'medical necessity' for surrogacy.

Question 63: We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth. Do consultees agree?

Yes

We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

Yes

Question 64: We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

Yes

We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway. Do consultees agree?

Yes

Question 65: We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

Yes

We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

Yes

Question 66: We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

Yes

We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Question 67: We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

Yes. Also, a surrogate who has not received implications counselling should be considered sympathetically if she wishes to keep the child.

Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Yes

Question 69: We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having been convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

Yes

We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

Yes, it is appropriate

Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Those who have never been pregnant or given birth will be unaware of the impact those experiences will have on them, let alone the impact of relinquishing a baby born to them. For these reasons, surrogacy should be limited to those who have previously given birth.

Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

No. Poor women may be coerced by their poverty into repeatedly offering themselves as surrogates, to the detriment of their health and of their own existing or future children. Pre-conception counselling should be aware of such coercion and address this issue. CMF is not in favour of a fixed limit but is in favour of diligent and sensitive counselling.

Question 72: We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

based on an allowance;

based on costs actually incurred by the surrogate, but without the need for production of receipts;
or

based on costs actually incurred by the surrogate, and only on production of receipts.

CMF is opposed to surrogacy in general. If the law around surrogacy is to be 'reformed', then commercial surrogacy should be prohibited. No child should be carried and born for a price. Reasonable costs incurred by the surrogate (post-conception costs in connection with continuing the pregnancy, miscarriage, birth or post-birth) and evidenced by receipts should be recoverable from the intended parents.

Question 73: We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

Only legitimate expenses, that would not have been incurred but for the pregnancy, should be recoverable - medical and related (e.g. travel) costs associated with continuing the pregnancy once it is established; costs associated with birth or miscarriage or as a result of birth injuries; costs of providing clothes and other essentials for the newborn.

Question 74: We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

No additional payments should be made. Commercialisation of surrogacy is a blight, wisely forbidden in a number of other European countries.

Question 75: We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

CMF believes that any payment, beyond covering essential costs, is unethical and contributes to the exploitation of women and the commodification of children

Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

The surrogate who quits her regular work in order to become a surrogate should carefully consider the impact on her income and benefits. CMF does not support payment for loss of earnings, as this would equate to payment for gestation, a commercial arrangement.

Question 77: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 in the text of the Consultation Paper); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 in the text of the Consultation Paper).

In both scenarios, payment would amount to a fee for services rendered – commercial surrogacy that CMF cannot support.

Question 78: We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

The reimbursement of medical expenses should have no impact on means-tested benefits. Payments other than for the reimbursement of legitimate expenses should not be made.

Question 79: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

pain and inconvenience arising from the pregnancy and childbirth; **No**

medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or **No**

specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy. **No. In particular, we strongly resist the idea that recompense be paid for an abortion performed at the request of the surrogate or the intended parents because some foetal abnormality has come to light. We abhor the consumerist notion that a baby is only acceptable if it is 'perfect'. A miscarriage or an obstetric complication around birth is indeed sad, but should not attract compensation. Unforeseen complications are a risk in every pregnancy and consent to these risks should be addressed as part of the counselling and pre-conception agreement process.**

We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

We invite consultees' views as to whether the level of compensation payable should be:

a fixed fee set by the regulator (operating as a cap on the maximum payable), or left to the parties to negotiate.

A national fixed fee should operate.

Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

If the surrogate has a pre-existing condition that could put her life at risk, then this must be disclosed at the pre-conception counselling stage and she should not be accepted as a surrogate. If a healthy potential surrogate wishes to be covered by a life insurance policy during the pregnancy, then the premium for this should form part of the recoverable expenses, by agreement with the intended parents.

Question 81: We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

'Gifts' may be payment by another name and should not be permitted. It is impossible to define what is 'modest' or 'reasonable'. To permit such exceptions would open the door to ambiguity and possible abuse of the permission.

Question 82: We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. **Disagree**

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. **Agree**

We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- any sum agreed between the parties to the surrogacy; or
- a fixed fee set by the regulator.

Payment, of any sum, should not be permitted

We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee (please tick as many as you agree with):

- no other payments;

essential costs relating to the pregnancy;

additional costs relating to the pregnancy;

lost earnings;

compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate;

and/or gifts.

Question 83: We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

Payments should not be permitted. Legitimate costs may be recovered. Compensation for disappointment or distress on either side should not figure.

We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

in the first trimester of pregnancy only;

to any miscarriage or termination; or

some other period of time (please specify in the box below).

Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Payments should not be permitted, whichever pathway applies.

Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Question 87: We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

Question 88: We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate. Do consultees agree?

No such terms should form part of the agreement. Intended parents and the surrogate must make a legally binding agreement not to seek or give any payment beyond legitimate expenses.

We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

Yes.

Question 89:

We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Question 90:

We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Question 91:

We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Question 92:

We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

CMF is opposed to surrogacy in principle. We strongly recommend that international surrogacy not be permitted and that the results from the Hague Conference on Private International Law on a new global convention on international surrogacy should be awaited before any guidelines for UK are prepared.

It is quite possible that the surrogate will wish to have some long-term contact with the child she has borne. In taking the child overseas, this wish is likely to be frustrated. It will also be much harder for the child to connect with his or her birth mother and the culture of the country where he or she was born.

Question 93:

We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Question 94:

We provisionally propose that it should be possible to open a file and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth. Do consultees agree?

We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

Do consultees agree?

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

No. We oppose advance application for a visa, and the bringing of visas within Immigration Rules. However, if a visa is granted this should not include the requirement that links with the surrogate be broken. Ongoing links between the surrogate and the child may be difficult in practice, because of language barriers and physical separation, but the possibility should be kept open.

Question 95:

We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

We strongly recommend that international surrogacy not be permitted and that the results from the Hague Conference on Private International Law on a new global convention on international surrogacy should be awaited before any guidelines for UK are prepared.

Question 96:

We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Question 97:

We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

CMF opposes surrogacy in principle and urges the British government not to permit international surrogacy arrangements. We recognise that a guide is simply a helpful and factual document, but we would strongly resist the inclusion of advice on pathways for referral to commercial surrogacy agencies.

Question 98:

We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

CMF opposes surrogacy in principle and urges the British government not to permit international surrogacy arrangements.

Question 99:

We provisionally propose that:

(1) the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

(2) before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

No. This would have the effect of streamlining international surrogacy arrangements. It also assumes that a Secretary of State can rely on the reassurances provided by an opposite number – a questionable assumption. It has been shown that in many countries where international surrogacy operates the protections against exploitation and for child welfare are the very protections that are lacking.

Question 100:

We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

CMF has no additional comment to make in response to Questions 101-107 (Chapter 17: Miscellaneous Issues) or to Questions 109-118 (Chapter 18: Impact)