



Thirteenth Programme of Law Reform consultation response

Please answer as many of these questions as you can, as fully as you can. If necessary, continue on additional sheets. Please also indicate where you are not able to provide an answer.

Please tell us about yourself:

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Tel:

(Please tick one or more box)

Member of the public

Third sector/voluntary sector

Commercial sector/business

Nature of third sector/business organisation: Charity

Practising lawyer

Academic

Specialist area:

Specialist area:

Member of the judiciary

Government official

Court or tribunal:

Department:

Local authority staff member

Parliamentarian

Other (please state): Head of Public Policy

Consultation Principles: The Law Commission follows the Consultation Principles set out by the Cabinet Office, which provide guidance on type and scale of consultation, duration, timing, accessibility and transparency. The Principles are available on the Cabinet Office website at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

We treat all responses as public documents in accordance with the **Freedom of**

Information Act and we may include the names of respondents and attribute comments in any publication relating to this consultation. If you want your submission to remain confidential, you should contact us before sending your response. (Please note that we disregard automatic IT-generated confidentiality statements.)

1. Which of the Law Commission's project suggestions do you wish to comment on?

Surrogacy

2. Can you give an example of how the issue highlighted causes problems in practice?

For example, if you are a solicitor or barrister, you might describe how the issue affects your clients.

Occasional court cases arise, but on the whole the law is working sufficiently well and provides a suitable framework for surrogacy arrangements in the UK that primarily works to protect the best interests of surrogate women and children.

3. What priority should we give to this issue compared with the other issues we have identified, and any other law reform proposals you have made?

No priority, a reform of the surrogacy laws in the UK is not needed

4. Please tell us about any court/tribunal cases, legislation or journal articles that relate to the problem we have identified.

You may be able to tell us the name of the particular Act or a case that relates to the problem.

Several court rulings and Acts, such as HFE Act 2008, and the HFEA regulations, have reviewed and updated the laws and regulations on surrogacy arrangements. The HFE Act in particular provided Parliament with an opportunity to debate and review the regulations on surrogacy. However, as noted in Q2 above, there are relatively few cases (although they sometimes get disproportionate publicity) and we consider that the law operates sufficiently well and needs no reform.

5. Can you give us information about how the issue is approached in other legal systems?

You might have some information about how overseas courts or tribunals approach the problem.

6. Within the United Kingdom, does the problem occur in any or all of England, Wales, Scotland or Northern Ireland?

7. What do you think needs to be done to solve the problem?

The law should remain as it is. Further reforms would not remove the need for Court involvement in complex cases. Instead, reform would remove some of the current protections for surrogate mothers and their child(ren) and could bring in commercial pressures in the arrangements and advertising of surrogacy.

8. What is the scale of the problem?

This might include information about the number of people affected this year or the number of cases which were heard in a court or tribunal over a particular period.

There are a few cases that generate media headlines, however these do not reflect the fact that the majority of surrogacy arrangements make neither the courts nor the media headlines. The law operates adequately as it is. Unfortunately, much of the publicity is unhelpfully driven by those who want the law on surrogacy to be liberalised on ideological grounds, not for the protection of most surrogate mothers and their children, for whom the law currently, primarily, serves. The drivers for change appear to be primarily prospective commissioning parents, who may often have no biological connection to the child, and who want to increase the number of arrangements that take place (which would lead to more court cases). Some drivers behind change want to see increased commercial involvement in the practice of surrogacy.

9. What would be the benefits of reform? In particular, can you identify any:

- **economic benefits (costs of the problem that would be saved by reform); or**
- **other benefits, such as societal or environmental benefits?**

For example, if the problem is one which must usually be resolved in court, court fees might be payable; this money might be saved if the problem was reformed. If it involves consulting a solicitor or barrister, legal costs might be relevant. Or, if the problem was one which caused significant costs to businesses, you might be able to tell us how much time or money businesses would save.

There are no benefits to be gained from reform. Indeed, we expect that it would lead to even more complex court cases by encouraging more surrogacy arrangements to take place, often involving complex family situations. We would be particularly concerned that the interests of surrogate women and their children could be put at more risk. We would strongly oppose any reform or change in law on surrogacy arrangements

There are significant social costs from surrogacy arrangements. Surrogacy is a form of exploitation of women which undermines the human dignity of the woman, since her body and its reproductive functions are used as a 'commodity'. It uses the human (female) body for financial and other gain. Hence the increasing use of the dehumanising term 'gestational carrier' to refer to surrogate mothers. This documentary looks at the impact on the women who serve as surrogates and on the children who are born from surrogacy: http://breeders.cbc-network.org/?mc_cid=1d59d6544c&mc_eid=ee57ca37d1 .

10. If this area of the law is reformed, can you identify what the costs of reform might be?

The costs of reform might include, for example, the cost of the legal profession and judiciary undertaking training to learn about a new statute.

11. Does the problem affect certain groups in society, or particular areas of the country, more than others? If so, what are those groups or areas?

As an example, if the law relates to agricultural land, it might affect farmers and their families more than the general population.

The law currently aims to protect and give adequate rights to surrogate mothers, which any reform would undermine in favour of the rights of prospective commissioning parents, whether biological or not.

12. In your view, why is the Law Commission the appropriate body to undertake this work, as opposed to, for example, a Government department, Parliamentary committee, or a non-Governmental organisation?

The Law Commission should not undertake any review of the law. It is purely for Parliament to decide, as has always been the case.

13. Have you been in touch with any part of the Government (either central or local) about this problem? What did they say?

14. Is any other organisation such as the Government or a non-Governmental group currently considering this problem? Have they considered it recently? If so, please give us the details of their investigation of this issue, and why you think the Law Commission should also look into the problem.

This month, October 11, 2016, The Parliamentary Assembly of the Council of Europe (PACE), during a plenary sitting, rejected a draft recommendation on surrogacy presented by the Belgian Senator Dr. Petra De Sutter. <http://assembly.coe.int/nw/xml/Votes/DB-VotesResults-EN.asp?VoteID=36186&DocID=16001&MemberID=&Sort=2>. The report appended to this recommendation was also rejected.

The Commission may be aware that the US state of Minnesota set up a legislative Commission on Surrogacy this year:

http://www.lcc.leg.mn/lcs/?mc_cid=1d59d6544c&mc_eid=ee57ca37d1

Thank you for your response.

Please send it to us, by **31 October 2016**, to:

13th Programme Project Officer

Law Commission

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We would like to know more about what our stakeholders think of the Law Commission and our work, and hear your thoughts on what we might change or improve. If you would be willing to take part in a short survey, please would you give us your email address: