

Briefing Note

Surrogacy

What is Surrogacy?

The Surrogacy Arrangements Act 1985 defines a surrogate mother “as a woman who carries a child in pursuance of an arrangement made before she began to carry the child, and made with a view to any child carried, being handed over to and parental responsibility being met by another person or persons.”

There are two forms of surrogacy, partial or full. Partial surrogacy involves the surrogate mother’s egg whereas in full surrogacy there is no genetic link between the surrogate mother and the child.

Is surrogacy legal in Scotland and can it be enforced?

Surrogacy arrangements in Scotland are legal but they are not enforceable in the courts. However, this does not necessarily mean that if a UK surrogate mother changes her mind the intended parents have no possible remedy.

It is important to note that it is illegal to pay a surrogate mother other than for “reasonable expenses”.

Parties to the Arrangement

A surrogacy arrangement will involve a surrogate mother herself, and the “commissioning couple” who are the couple who seek to assume parentage of the child. As the law currently stands only a couple (a couple being spouses, civil partners or cohabitants) can apply for a parental order for the child that is born and a single person is excluded from doing so.

Legal Status of the Parties

The legal parentage of a child born to a surrogate mother is often a complex question and one governed by rules of law rather than biology.

When the child is born, the surrogate mother will immediately have parental rights and responsibilities for the child. If the surrogate mother is married or in a civil partnership, then her husband/civil partner will acquire those rights and responsibilities as well.

Once the child is handed over to the commissioning couple they need to acquire the rights to become the child’s legal parents. They do this by applying to the court for a parental order. If the parental order is granted the child will be treated in law as if born to the persons who obtained the order.

If something goes wrong and the surrogate mother does not consent to a parental order being granted then there are other possible remedies available to couples but much will depend on the facts and circumstances of the case.

Surrogacy Abroad

There are some countries where commercial surrogacy arrangements are legal. If you are considering entering into such an arrangement you should seek legal advice in all jurisdictions potentially involved before embarking on this course of action.

Advice

If you would like more information or advice in relation to surrogacy please contact a member of the Divorce and Family Law team at Turcan Connell.

Please note that this briefing note is intended as a short summary of surrogacy in Scotland. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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