



## What Is Surrogacy: Everything You Need To Know About Surrogates And Intended Parents

From the costs and medical requirements to the law and parental leave, we take a look at what it means to be a surrogate and intended parent.



By [Katie O'Malley](#) Nov 2, 2017

From Sarah Jessica Parker and Elizabeth Banks to Nicole Kidman and Jimmy Fallon, there are countless high profile parents who have chosen to have children via surrogacy.

But how much do you really understand of the practice?

Earlier this summer, media mogul and reality star Kim Kardashian [announced she was expecting her third child via surrogate](#). She opted for surrogacy for her third pregnancy due to having suffered from *placenta accreta* (a serious condition where the placenta stays firmly attached to the uterus wall after childbirth instead of detaching) during her previous pregnancies.

And suddenly, with the spotlight firmly on another famous surrogacy situation, it's about time we explored the ins and outs of it more thoroughly.



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**Here is our surrogacy guide, explaining what it is, how it works, and the legal implications surrounding the practice:**

[What is surrogacy?](#)

According to [Surrogacy UK](#), surrogacy is when a woman (a third party) carries and gives birth to a baby for a couple who are the 'intended parents, because they 'cannot conceive, or carry a child to term, due to a medical problem'.

Common reasons why intended parents may look for a surrogate include recurrent miscarriage, repeated failure of IVF treatment, premature menopause and an absent or abnormal uterus.

Since 2010, same-sex couples have also been able to become intended parents in the UK.

In the UK, surrogacy became legal via the Surrogacy Arrangements Act 1985 and while it *is* a legal form of fertility treatment, it is illegal to [advertise](#) for a surrogate, or to advertise to *be* a

surrogate, contrary to in the US. So, in the UK, you can become a surrogate or search for a surrogate through surrogacy organisations.

*There are two types of surrogacy:*

- **A gestational/host surrogate:** a woman carries a baby that she has no genetic link to. The egg and sperm are both provided and the embryo is then implanted into the surrogate's womb.

The surrogate will receive treatment at a fertility clinic in order to help transfer the embryo to the womb.

Surrogacy UK explains some fertility clinics may require a surrogate to undergo a 'mock transfer' to ensure she is physically capable of being a surrogate - a procedure compared, in how it feels for the woman it is performed on, to a cervical smear.

- **A traditional/straight surrogate:** a woman carries a baby that has been created using one of her own eggs, and donated sperm from the intended father.

The surrogate will receive treatment at a fertility clinic to insert the sperm into her reproductive canal or she will use artificial insemination at home.



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What's the difference between surrogacy in the US and in the UK?

In the UK, commercial surrogacy (paying a surrogate) is [illegal](#), except for their reasonable expenses (explained below).

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However in the US, intended parents can expect to pay a surrogate what is known as an 'inconvenience fee' (typically valued between \$20,000 and \$35,000) in addition to expenses.

Financial reimbursements are agreed upon in a legally-binding surrogacy contract.

In terms of transatlantic surrogacy: while it's not illegal for UK-based intended parents to enter into a surrogacy agreement in the US, the UK court will have to decide whether to authorise payments made to the US surrogate and an agency in order to grant a parental order.

What are 'reasonable expenses'?

[Brilliant Beginnings](#) outlines that expenses in the UK can include travel costs, treatment costs, maternity clothes, counselling or professional support in connection with surrogacy, childcare costs and any loss of earnings.

Reimbursement may be agreed as a lump sum or paid on a case by case basis as the expenses arise.

If intended parents pay a surrogate more than her reasonable expenses, the court must consider whether to authorise the payment.

Intended parents must also account for fertility treatment costs and any other legal fees including the drawing up or help with parental order applications via an organisation.

The average cost for expenses is estimated to range from around £7,000 to £15,000, but it entirely depends on the case.

What are the requirements for surrogates?

As the risks of illness and complications are much higher in the first pregnancy, it is strongly recommended that surrogates have given birth to at least one child previously, and preferably have completed her own family.

While there is no age limit for surrogates in most surrogacy organisations, there are considerations, given that the risks of pregnancy increase with age. Applications are usually only accepted from surrogates aged 21 and over.

Who Is The Legal Mother Of The Child?

In the UK, the surrogate is the legal mother of any child they carry and has the right to keep the child even if they're not genetically related.

Parenthood, however, can be transferred by a parental order or adoption. It's important to remember that until a parental order or adoption is signed, a surrogate *can* keep the baby if she wishes to.

The child's legal father or 'second parent' will be the surrogate's husband or partner unless:

- legal rights are given to someone else through a parental order or adoption
- the surrogate's husband or civil partner didn't give their permission to their wife or partner

If a surrogate doesn't have a partner (including marriage or in a civil partnership) the child will have no legal father or second parent unless the partner actively consents.

In the UK, the surrogate is the legal mother of any child they carry and has the right to keep the child even if they're not genetically related.

Linder Wilkinson, a gestational surrogate who gave birth to a baby girl called Edurne in 2015, told *ELLE UK* that she hopes to see a change in the law so that intended parents, rather than a surrogate, become the legal guardians of a the child from birth.

'When I gave birth to Edurne, my name and my husband's name had to go on the birth certificate while her parents had to apply for a parental order to receive their *own* birth certificate,' said the 35-year-old.

'As a surrogate, you don't want to have your name on the child's birth certificate. If there was a medical emergency, you'd hate for there to be a delay in treatment because doctors need to speak the legal parent (the surrogate) first when they don't even live in the same house as the child.'



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What is a parental order and how does it work in surrogacy cases?

A parental order is a set of orders made by a court about parenting arrangements for a child. You cannot apply for a parental order if you're single.

To apply for a parental order, the intended parents must be genetically related to a child (for example, the egg or sperm donor) and in a relationship where the couple are married/civil partners/living as partners.

Under UK law, a couple must have the child living with them and reside permanently in either the UK, Channel Islands or Isle of Man.

In a traditional or straight surrogacy (in the case when the intended parents aren't genetically related to the child) or if the intended parent is single, adoption is the only way to become a child's legal parent.

You cannot apply for a parental order if you're single.

What happens if the surrogate decides to keep the baby?

'It is incredibly rare for a surrogate to change her mind about handing over the child,' explains Stephen Ashe from Brilliant Beginnings.

'There have only been a tiny handful of disputed surrogacy cases, compared with thousands of successful surrogacy arrangements.'

If a surrogate decides to keep a child, the intended parents can ask the family courts to get involved and make a decision about who the baby should live with.

As a result, the court then decides what is in the best interest of the child in the particular circumstance.

Do surrogates sign away their right to ever see the child?

When a parental order is made, the surrogate's legal responsibilities are extinguished. However, it is usual for surrogates and parents to stay in touch.

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What happens if the child is born outside of the UK?

If a surrogate gives birth abroad, intended parents can only apply for a parental order if they live in the UK. In order for the child to enter the UK, they will require a visa.

[Gov.uk](https://www.gov.uk) outlines that using a surrogate abroad can be complicated because different countries have different rules.

Surrogacy laws differ depending on the country. In places such as France, Germany, Italy, Spain, Portugal and Bulgaria, all forms of surrogacy are banned.

Commercial surrogacy is legal in some US states (click [here](#) to find out more), and countries including India, Russia and Ukraine.



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What are parental leave laws in the UK for intended parents?

Intended parents may be eligible for adoption pay and leave and paternity pay when using a surrogate.

Those ineligible for paid leave may be able to take parental leave or annual leave but this depends on the case.

Is a surrogate entitled to maternity leave?

Every pregnant employee has the right to 52 weeks' maternity leave and to return to their job after pregnancy and birth, regardless of whether they're a surrogate or not.

Is it illegal to organise a surrogacy outside of a registered surrogacy organisation?

While it isn't illegal, help from an organisation is advised for the benefit of both intended parents and surrogates.

'Some people do enter into private arrangements without the involvement of an organisation (often friends and family members) but having the support of an agency is a sensible protection if you are working with someone you don't know,' says Ashe from Brilliant Beginnings.



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What do surrogacy organisations do in terms of helping surrogates and intended parents work together?

Trust is the key component in a surrogacy partnership.

The role of a surrogacy organisation, such as Surrogacy UK or Brilliant Beginnings, is largely to make sure the surrogate and intended parents feel supported and well-informed.

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'Once we feel that we have found a good match, we would send information to each including anonymised profiles and some photos and a letter that the surrogate and also the intended parents have written,' explains Ashe.

When a match is made, the 'team' (comprising of a surrogate and intended parents) is encouraged to talk to each other and learn about each other's lives before they make a decision about what they want to do next.

'We then swap everyone's details, and they have a chance to start talking to each other. When they are ready they would then move towards bringing together an agreement between each of them, and we assist with this.'



Do surrogacy organisations take a fee from the surrogacy?

Yes, all organisations in the UK take a fee which can come from annual membership or fixed fees. These fees are paid for by the intended parents and dependent on what services are required from the surrogacy organisation.

Some organisations offer full matching and management services which includes finding a surrogate, screening and creating an agreement between the parents, or alternatively can provide help with specific parts of the surrogacy process, as so wished for by the parents.



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What are the complications of surrogacy?

The [BBC](#) outlines that there are currently no internationally recognised laws for surrogacy, which leaves many parents, surrogates and children vulnerable or stateless.

Difficulties may also arise depending on the parents' legal status and in the case of a divorce/split.

For example, in the case of traditional surrogacy, the father who supplied the sperm might have parental rights over the intended mother who didn't provide an egg.

For surrogates, there can be the risk that if there is a medical abnormality or unforeseen complication with the child's gestation that they could be at risk of the intended parents abandoning the child.

As regulations differ from country to country, there's also risk of exploitation and abuse of surrogates.

*Find out more about the services provided by Surrogacy UK [here](#) and Brilliant Beginnings [here](#).*