

## Intended parents should get legal status from birth, says British surrogacy review

Law commissions for England, Wales and Scotland recommend update to 40-year-old surrogacy law

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*Couples must currently wait six weeks to become legal parents after using a surrogacy agreement, but can wait up to a year. Photograph: Daisy-Daisy/Alamy (posed by models)*

The intended parents of a child born to a surrogate mother should be able to get legal parenthood from the point of its birth, [a government-commissioned review](#) of the existing laws in Britain has concluded.

The couple who will raise the child must currently wait at least six weeks to become the legal parents, but in practice they often wait for up to a year to go through the courts. In a joint report, [published on Wednesday](#), the Law Commission of England and Wales and the Scottish Law Commission say the effect is that the intended parents cannot make any decisions in respect of the child, including with respect to medical treatment.

They say the existing law, dating back almost 40 years, “does not work in the best interests of any of the people involved”, also recommending the creation of a new surrogacy register, which would give children born through [surrogacy](#) the opportunity to trace their origins when they are older.

Prof Nick Hopkins, family law commissioner at the Law Commission, an independent body that recommends legal changes for England and Wales, said the reforms would place the interests of the child at their heart.

“The use of surrogacy to form a family has increased in recent years, but our decades-old laws are outdated and not fit for purpose,” he said. “Under current law, surrogacy agreements are often a complex and stressful process for all involved.

“We need a more modern set of laws that work in the best interests of the child, surrogate and intended parents. Our reforms will ensure that surrogacy agreements are well-regulated, with support and security built into the system from the very beginning.”

Under the changes, the scrutiny of the surrogacy arrangements would start pre-conception and the intended parents would not have to apply to the courts for a parental order.

The new process would be overseen by non-profit surrogacy organisations, which would be regulated by UK fertility regulator the Human Fertilisation and Embryology Authority and undertake screening and safeguards, including medical and criminal records checks, independent legal advice and counselling.

The report recommends that the surrogate has the right to withdraw her consent to the surrogacy agreement up to six weeks after birth, in which case the intended parents would have to apply to the court for a parental order. Under the current law, courts cannot issue a parental order if the surrogate does not consent to it but the changes would allow judges to do so if they considered the welfare of the child required it.

The commissions, who state that commercial “for-profit” surrogacy should continue to be prohibited, also set out to clarify what payments to surrogates should be permitted through a new set of rules. Permitted payments include medical and wellbeing costs, to recoup lost earnings, pregnancy support and travel. Prohibited payments include those made for carrying the child, compensatory payments and living expenses such as rent.

The changes are intended to create an improved, well-regulated domestic surrogacy regime to dissuade couples from opting for international surrogacy agreements, which can bring a greater risk of exploitation for women and children.

However, the report also makes recommendations to help intended parents bring children born to surrogate mothers overseas home to the UK more quickly. These include enabling intended parents to begin the application process for passports and visas before birth, although the formal application would not be able to be made until after the child had been born.

It will now be for the UK government to consider whether the commission’s recommendations should become law.