

Consent for Surrogacy

London Bridge Fertility Gynaecology and Genetics Centre

Surrogacy raises legal issues which must be addressed by specialists - and the notes below are simply a general overview and no substitute for the professional advice which is necessary.

Surrogacy is legal in the UK, although the law does not recognise it as a binding agreement on either of the parties involved during the period preceding and immediately after the birth of the child.

There is, therefore, nothing that the intended parents can do prior to the birth to secure their position with total certainty - even if IVF treatment has been used and the child is genetically-related to both parents.

At birth, the intended father's name can be put on the birth certificate and he immediately has equal rights over the child with the surrogate.

Six weeks after the birth of the child, the intended parents can apply for a Parental Order which gives them full and permanent rights over the child and, at this stage, the surrogate relinquishes all rights.

In the UK, surrogacy arrangements can only be made for UK residents. It is illegal under the Adoption and Children Act of 2002 for anyone to take a child out of the UK with a view to adopting it in another country.

Similarly, it is important to take great care in entering into surrogacy arrangements overseas.

While it is best to be prepared for every eventuality, there is no need to approach surrogacy with trepidation and the fear that you are entering into a complex legal nightmare - the vast majority of intended parents find it rather less stressful than that - but you must have an experienced and sympathetic lawyer representing you from the outset.

for completion by both parties

We, (the surrogate):

and, (the surrogate's husband/partner):

the Intended mother:

the Intended father:

Other:

hereby state that we understand the procedures involved in fertility treatment with Surrogacy and request and authorise you and suitably trained members of your clinical team to implement treatment.

1. We have had a full discussion with _____ On (Date) / /

2. We have been given the opportunity to be fully informed of all aspects involved in Surrogacy.

3. We confirm that we have each been advised by Bridge to take and have taken separate legal advice in relation to the proposed surrogacy.

4. We understand that: -

4.1 under the terms of the Human Fertilisation and Embryology Act 1990 ("HFE Act") no "surrogacy arrangement" is enforceable by or against the person making it. Accordingly, we understand that although we have each signed this document, none of us will be able to enforce it insofar as it constitutes an unenforceable "surrogacy arrangement";

4.2 any child born will be registered as the child of the surrogate mother and (if applicable) the child of her husband/partner/other person treated as the father under the HFE Act;

4.3 parental rights and obligations relating to a child born from a surrogacy arrangement may only be transferred from the birth parents to the commissioning parents if a "parental order" is made by a court. A "parental order" will only be made if certain conditions are satisfied. Those conditions are summarised in Annex 1 attached to this document.

5. We further understand and agree that Bridge shall not have any liability whatsoever to any of the parties if any of us fails to abide by this agreement or any agreement referred to in paragraph 6 or if this agreement (or any agreement referred to in paragraph 6) is held to be an unenforceable surrogacy arrangement, in whole or in part.

6. We have had legal advice and have finalised an agreement between us relating to:

6.1 what expenses will be paid, how much and when;

6.2 who will attend ante-natal appointments / scans;

6.3 what tests will be carried out during pregnancy and what happens if a handicap is diagnosed;

6.4 what arrangements are to be made for “hand-over”;

6.5 decisions as to future contact;

6.6 what insurance arrangements have been made for a fatality of the Surrogate - or either intending parent - before the birth;

6.7 where the birth will take place and who will be present;

6.8 what happens to expenses if “hand-over” does not take place.

7. We understand and agree to: -

7.1 the preparation of the surrogate mother by means of administering drugs;

7.2 the fertilisation of the eggs recovered from - the Intended mother/ surrogate mother/ a female donor - by the semen from the intended father /an anonymous sperm donor;

7.3 the maintenance and development of any oocyte(s) or resulting embryo(s), under the care of the medical and scientific staff, until the decision is made by the medical and scientific staff that the embryo(s) are ready for replacement in the surrogate mother;

7.4 the selection and replacement of embryo(s) which are considered the most suitable by the medical and scientific staff.

8. We consent to the performance of any operations required during the treatment, the nature and effect of which having been explained to us. We also consent to such further and alternative measures as may be found necessary during the course of those procedures, and to the administration of general, local or other anaesthetic for any of these purposes, if required.

9. We have received independent counselling and a report has been given to the Bridge medical team.

10. We understand and accept that there is no certainty that a pregnancy will result from these procedures, even when eggs are recovered and the placement of oocytes / embryos carried out.

11. We also understand that more than one potentially viable embryo or egg may be obtained. We understand the risks associated with multiple pregnancy and request that one/two embryo(s) be replaced (maximum 2). Any potentially viable embryos that are in excess of this number, we hereby give permission for them to be:

11.1 cryopreserved for future use

11.2 disposed of in the lawful way

11.3 donated for research

We acknowledge that we may have to sign applicable HFEA forms in relation to the above and agree to do so.

12. We fully agree and understand that the clinical team handling our treatment shall not be responsible for, nor can guarantee the physical or mental characteristics of, any child or children conceived or born.

13. We understand that if we are a national or resident of a country other than the UK or have obtained gametes from a foreign donor, the law of other countries regarding parentage may not be the same as it is in the UK.

14. We confirm that: -

14.1 we have read the relevant information (including risks) provided by Bridge and have received oral information from Bridge (including as to the risks/procedures/screening/tests that will be undertaken). We understand the risks that have been explained to us;

14.2 we have had all our questions answered to our satisfaction and have had the opportunity to discuss any relevant matters with the staff at Bridge;

14.3 where required by the current HFEA Code of Practice (or other applicable law) we have been offered a suitable opportunity to receive counselling;

14.4 we will immediately inform Bridge of any change of contact details (such as our address or telephone number).

15. It is further agreed that the nature of this agreement is such that it must remain confidential. We therefore agree that a copy of this agreement may be retained in the files of the clinical team and shall not be disclosed except with our express written permission, except that the clinical team may disclose this agreement as may be required by law or in connection with any legal proceeding to which it is relevant.

Signatures:

The surrogate	Date	/	/
The surrogate's husband/partner	Date	/	/
The intended mother	Date	/	/
The intended father	Date	/	/
Other (describe)	Date	/	/
Signature (Doctor / Nurse)	Date	/	/

Annex 1

Parental Orders In Surrogacy Cases

Conditions which must be fulfilled before a parental order can be granted

- The child must be genetically related to at least one of the commissioning couple
- The surrogate parents must have consented to the making of the order (unless incapable of giving consent or are untraceable) no earlier than six weeks after the birth of the child
- The commissioning couple must be married to each other, and both must have reached the age of 18
- The commissioning couple must have applied for an order within six months of the child's birth
- No money, other than expenses, must have been paid in respect for the surrogacy arrangement, unless authorised by a court
- The child must be living with the commissioning couple
- The commissioning couple must be domiciled in the United Kingdom, the Channel Islands or the Isle of Man

Application forms for parental orders will be available from Family Proceedings Courts (Magistrate Courts) in the commissioning couple's home area. Legal Services Commission funding may be available to cover parental order proceedings.

Proposed surrogacy situations where the above requirements would not be met would need to take account of the requirements of the Adoption Act 1972. This requires the involvement of an approved adoption agency and other requirements.

Situations that may arise that would mean a parental order could not be applied for include:

1. The commissioning parents are not married
 2. There is no genetic link between the commissioning parents and the baby the surrogate is carrying. This would be, for example, where donor sperm had been used in a partial surrogacy arrangement (ie, using the surrogate's egg) or donated embryos had been used to initiate the pregnancy.
- Payment beyond reasonable expenses had been given to the surrogate mother
 - The commissioning parents are not domiciled in the United Kingdom, the Channel Islands or the Isle of Man