

14. Surrogacy

This guidance note contains:


Mandatory requirements

- Extracts from the HFE Act 1990
- Reference to relevant Regulations
- Reference to relevant HFEA Directions

HFEA guidance

- Patients providing gametes in surrogacy arrangements ■
- Additional information for those involved in surrogacy arrangements

Other legislation, professional guidelines and information

 Refer to principle 5

■ Section includes interpretation of mandatory requirements



Mandatory requirements

Human Fertilisation and Embryology Act 2008

PART 2 – Parenthood in cases involving assisted reproduction

Parental orders

- 54 (1) On an application made by two people (“the applicants”), the court may make an order providing for a child to be treated in law as the child of the applicants if—
- (a) the child has been carried by a woman who is not one of the applicants, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination,
 - (b) the gametes of at least one of the applicants were used to bring about the creation of the embryo, and
 - (c) the conditions in subsections (2) to (8) are satisfied.
- (2) The applicants must be—
- (a) husband and wife,
 - (b) civil partners of each other, or
 - (c) two persons who are living as partners in an enduring family relationship and are not within prohibited degrees of relationship in relation to each other.
- (3) Except in a case falling within subsection (11), the applicants must apply for the order during the period of 6 months beginning with the day on which the child is born.
- (4) At the time of the application and the making of the order—
- (a) the child’s home must be with the applicants, and
 - (b) either or both of the applicants must be domiciled in the United Kingdom or in the Channel Islands or the Isle of Man.
- (5) At the time of the making of the order both the applicants must have attained the age of 18.
- (6) The court must be satisfied that both—
- (a) the woman who carried the child, and



Mandatory requirements (cont)

(b) any other person who is a parent of the child but is not one of the applicants (including any man who is the father by virtue of section 35 or 36 or any woman who is a parent by virtue of section 42 or 43),

have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.

(7) Subsection (6) does not require the agreement of a person who cannot be found or is incapable of giving agreement; and the agreement of the woman who carried the child is ineffective for the purpose of that subsection if given by her less than six weeks after the child's birth.

(8) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by either of the applicants for or in consideration of—

(a) the making of the order,

(b) any agreement required by subsection (6),

(c) the handing over of the child to the applicants, or

(d) the making of arrangements with a view to the making of the order,

unless authorised by the court.

(9) For the purposes of an application under this section—

(a) in relation to England and Wales, section 92(7) to (10) of, and Part 1 of Schedule 11 to, the Children Act 1989 (c. 41) (jurisdiction of courts) apply for the purposes of this section to determine the meaning of “the court” as they apply for the purposes of that Act and proceedings on the application are to be “family proceedings” for the purposes of that Act,

(b) in relation to Scotland, “the court” means the Court of Session or the sheriff court of the sheriffdom within which the child is, and

(c) in relation to Northern Ireland, “the court” means the High Court or any county court within whose division the child is.

(10) Subsection (1)(a) applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

(11) An application which—

(a) relates to a child born before the coming into force of this section, and

(b) is made by two persons who, throughout the period applicable under subsection (2) of section 30 of the 1990 Act, were not eligible to apply for an order under that section in relation to the child as husband and wife,

may be made within the period of six months beginning with the day on which this section comes into force.

Interpretation of Part 2

58 (1) In this Part “enactment” means an enactment contained in, or in an instrument made under—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) a Measure or Act of the National Assembly for Wales, or

(d) Northern Ireland legislation.

(2) For the purposes of this Part, two persons are within prohibited degrees of relationship if one is the other's parent, grandparent, sister, brother, aunt or uncle; and in this subsection references to relationships—

(a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would subsist but for adoption, and



Mandatory requirements (cont)

(b) include the relationship of a child with his adoptive, or former adoptive, parents, but do not include any other adoptive relationships.

(3) Other expressions used in this Part and in the 1990 Act have the same meaning in this Part as in that Act.

Regulations

The Parental Orders (Human Fertilisation and Embryology) Regulations 2010

The Parental Orders (Human Fertilisation and Embryology) (Scotland) Regulations 2010

Copies of this legislation can be found at www.opsi.gov.uk

Directions

0005 – Directions on collecting and recording information for the HFEA

For a copy of the relevant Directions visit www.hfea.gov.uk



HFEA guidance

Patients providing gametes in surrogacy arrangements



Interpretation of mandatory requirements

14A

Patients providing gametes in surrogacy arrangements must be registered as donors and therefore:

- (a) screened as donors, in accordance with screening requirements for donors of gametes, and
- (b) be subject to all other requirements (eg, consent, counselling and provision of information) applicable to donors.

See also guidance notes:

- **11 – Donor recruitment, assessment and screening**

Additional information for those involved in surrogacy arrangements

- 14.1** In addition to providing relevant information about gamete donation, the centre should give those involved in surrogacy arrangements information about the effect of the Parental Orders provisions in the HFE Act 2008. These state that parental rights and obligations in respect of surrogacy arrangements may be transferred from the birth parents to those who commissioned the surrogacy arrangement, as long as certain conditions are met.
- 14.2** The centre should advise patients that surrogacy arrangements are unenforceable and that they should seek legal advice about this.
- 14.3** The centre should advise patients intending to travel to another country for the purpose of entering into a surrogacy arrangement not to do so until they have sought legal advice about:
- (a) legal parenthood of the prospective child, and
 - (b) the adoption or parental orders procedures for that country.



HFEA guidance (cont)

See also guidance notes:

- [4 – Information to be provided prior to consent](#)
- [6 – Legal parenthood](#)



Other legislation, professional guidelines and information

- Surrogacy Arrangements Act 1985
- Home Office UK Border Agency – www.bia.homeoffice.gov.uk