Human Fertilisation & Embryology Authority

Legal parenthood and surrogacy decision tree

Scenario 1
Is the surrogate married or in a civil partnership?

Yes → The **husband** or **civil partner** will be the legal father or parent of any child born as a result of her treatment, unless:
(a) the surrogate and her husband or civil partner were judicially separated at the time of the treatment, or
(b) it is shown, 'as a question of fact' (see box 6H), that her husband or civil partner did not consent to her treatment.

No ↓

Scenario 2
Has both the intended father provided sperm and the intended female parent provided eggs for the surrogacy treatment?

Yes → The **intended father** can be the legal father at common law when the child is born (if no one else has been nominated).

or

The **intended female parent** can be the legal parent when the child is born if:
(a) both she and the surrogate have given the relevant consent
(b) neither consent has been withdrawn (or superseded), and
(c) they are not within prohibited degrees of relationship to each other.

No ↓

Scenario 3
Has donor sperm and the intended female parent's eggs been used for the surrogacy treatment?

Yes → The **intended father** can be the legal father when the child is born if:
(a) both he and the surrogate have given the relevant consent
(b) neither consent has been withdrawn (or superseded), and
(c) they are not within prohibited degrees of relationship to each other.

or

The **intended female parent** can be the legal parent when the child is born if:
(a) both she and the surrogate have given the relevant consent
(b) neither consent has been withdrawn (or superseded), and
(c) they are not within prohibited degrees of relationship to each other.

No ↓

Scenario 4
Have donor eggs (or the surrogate's eggs) and the intended father's sperm been used for the surrogacy treatment?

Yes → The **intended father** can be the legal father at common law when the child is born (if no one else has been nominated).

or

The **intended female parent** can be the legal parent when the child is born if:
(a) both she and the surrogate have given the relevant consent
(b) neither consent has been withdrawn (or superseded), and
(c) they are not within prohibited degrees of relationship to each other.

No ↓

Scenario 5
Is a male same-sex couple (of whom one has provided sperm) commissioning the surrogacy treatment?

Yes → The **biological intended father** can be the legal father at common law when the child is born (if no one else has been nominated).

or

The **non-biological intended father can** be the legal father when the child is born if:
(a) both he and the surrogate have given the relevant consent
(b) neither consent has been withdrawn (or superseded), and
(c) they are not within prohibited degrees of relationship to each other.

No ↓

Scenario 6
Is a female same-sex couple (of whom one has provided eggs) commissioning the surrogacy treatment?

Yes → Either the **biological** or **non-biological intended female parent** can be the legal parent when the child is born if:
(a) both the intended female parent and the surrogate have given the relevant consents
(b) neither consent has been withdrawn (or superseded), and
(c) they are not prohibited degrees of relationship to each other.