



# National Fertility Awareness Week: Q&As about assisted conception agreements & arrangements

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This week is National Fertility Awareness week run by Fertility Network UK. There are approximately 3.5 million people in the UK facing fertility issues.

In support of National Fertility Awareness Week, Emma Ritchie, a solicitor in our family team, takes a look below at the legal options and considerations of assisted conception such as donor agreements, surrogacy arrangements in the UK and surrogacy arrangements abroad.

## Q: What is a donor agreement?

Assisted conception by sperm donation can take place with an unknown donor at a licensed clinic or with a known donor (at a licenced clinic or at home). An unknown donor at a licensed clinic will not be the legal parent and will have no parental rights for a child (although a child born after 2005 does have the right to access identifying information about the unknown donor).

However a known donor is not automatically excluded as the legal father. This is where donor agreements are typically entered into between the donor and the prospective parent(s). The purpose of a donor agreement is to protect the donor against potential adverse implications in the future, such as financial responsibilities for the child.

The agreement will consider who will be named on the birth certificate and what legal applications will be made after the birth (e.g. parental or adoption orders to change the legal parents of the child) as well as other considerations, such as:

- Who will be financially responsible for the child;
- Whether the donor will be reimbursed for any expenses (it is illegal in the UK to donate sperm for commercial gain);

- Whether there will be provision for future donations for future siblings;
- Whether the child should have the right to contact the donor and vice versa; and
- What they wish to happen to the child if the intended parents die.

Donor agreements are not legally binding in England, however, if all parties take independent legal advice before entering into the agreement the court will give it more weight when considering any subsequent application.

For information about who automatically has parental responsibility where assisted conception has been used, Giuseppe Pingerna has helpfully covered this topic:- <https://lnkd.in/ePHPhTx8>

## **Q: Who can enter into a surrogacy arrangement?**

Surrogacy is where a surrogate mother carries and gives birth to a child for the intended parent(s) to become the legal parent(s). The intended parents can be a couple (married, in a civil partnership or co-habiting) and or the intended parent can be an individual (since a landmark case in 2015). The key requirement is that the intended parent (or at least one of the intended parents) must provide genetic material to create the embryo so that at least one of them is genetically related to the child.

## **Q: What are the different types of surrogacy arrangements?**

There are 2 types of surrogacy:

- 1) "traditional surrogacy" where the surrogate uses her own eggs for the pregnancy or
- 2) "gestational surrogacy" where the surrogate doesn't provide her eggs for the pregnancy and the embryo is created in vitro (by IVF) and transferred to the surrogate. This can be the egg of the intended mother fertilised by the intended father/ a sperm donor. Alternatively, where the intended parents are a same-sex male couple or where the intended mother cannot use her own egg then this can be using a donor egg fertilised by the intended father.

## **Q: What is the legal process for a surrogacy arrangement and the purpose of a surrogacy agreement?**

When the surrogate mother gives birth to a child, she is treated as the child's legal mother (regardless of whether she is genetically related or not) unless and until an order is made by the court to transfer the legal parenthood from the surrogate, and her spouse if applicable, to the intended parent(s) (known as a "parental order"). An application for a parental order must be made within six months of the child's birth, however, the

surrogate mother's consent to the parental order application cannot be given any earlier than 6 weeks' after the child's birth.

A surrogacy agreement is not legally binding however, provided it meets the UK's requirements, the court will give it more weight when considering a parental order application. A surrogacy agreement is very useful to set out the practical and legal arrangements for the surrogacy to help avoid the pitfalls of the UK's surrogacy rules – for example it is illegal to enter into a surrogacy arrangement for commercial purposes – however the parties may reimburse the surrogate for their surrogacy-related expenses.

### **Q: If the surrogacy takes place internationally – will it be recognised in the UK automatically?**

International surrogacy is a surrogacy arrangement where the surrogate mother lives in an overseas country. There is no international surrogacy regulation, treaty or convention recognised in the UK currently. This means that a surrogacy arrangement abroad is not automatically recognised in the UK and the intended parents will not automatically be recognised as the child's legal parents in the UK even if they have acquired parental rights in the country the child was born in.

When applying for a parental order in the UK following an international surrogacy arrangement, the intended parents will still need to comply with the UK's surrogacy rules. Intended parents can run into issues when the surrogacy arrangement has taken place in a country where the surrogacy regulations differ to those in the UK. For example in the UK, surrogacy for commercial purposes is illegal which means there can be no commercial payment for the surrogate. Instead, the UK permits that the surrogate may be reimbursed for their surrogacy-related expenses. On average these can be in the area of £12,000 to £20,000 (however it is not an exact science). The court will carefully review the reimbursement payments to a surrogate (either abroad or in the UK) in order to check that said payments have been used for reasonable expenses when considering the intended parents' parental application.

The surrogate mother's (and spouse if applicable) consent will also still need to be obtained as part of the intended parent's court application in England and Wales in order to become the legal parents. The consent cannot be given earlier than 6 weeks after the child's birth and therefore a surrogacy agreement will need to make arrangements to ensure that the surrogate mother can be located and contacted for her consent after the child's birth.

It is therefore very important to involve solicitors at an early stage when you are considering international surrogacy. This is so you can avoid the pitfalls of the UK's surrogacy rules and to ensure that the correct parental orders are applied for both abroad and in the UK. You will also need to arrange for immigration advice to ensure that your child can enter and remain within the UK.

## Next steps

Our specialist solicitors can assist with the complexities of fertility law, both in the UK and abroad, and can help you understand all aspects, as well as ensuring your new family is legally protected. Here are just some of the ways we can help you:

- Advise you on the acquisition of legal rights following the birth of your donor-conceived child;
- UK and International surrogacy arrangements;
- Drafting a co-parenting agreement;
- Advise you in relation to the financial provision for your children; and
- Advise you in relation to disputes involving your children

You can get in touch with our team of specialist [family lawyers](#) by [Online.Enquiries@LA-Law.com](mailto:Online.Enquiries@LA-Law.com) or on [03449670793](tel:03449670793).