Submitted to **The Law Commissions' Consultation on Surrogacy**
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About you

1 What is your name?

Name:
Marilyn Crawshaw

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:
The British Association of Social Workers (BASW) Project Group on Assisted Reproduction, PROGAR (https://www.basw.co.uk/progar/) has since the 1980s campaigned on matters concerning assisted reproduction, including surrogacy, in the UK and overseas. We have variously worked in partnership with donor-conceived adults, Barnardo's, Children's Society, Donor Conception Network, British Infertility Counselling Association (BICA), British Association for Adoption and Fostering (BAAF), National Association of Guardians ad Litem and Reporting Officers (NAGALRO), Children and Family Court Advisory and Support Service (Cafcass), Children and Families Across Borders (CFAB) and UK DonorLink.

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a response on behalf of an organisation

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Not Answered

5 What is your email address?

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7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:
PROGAR is inclined to support this proposal for the reasons set out by the High Court judiciary (pp 113-115), i.e. primarily to enable them to retain their expertise.

Please provide your views below:
We believe that they should continue to be allocated to a High Court Judge but in the event that the decision is made not to continue this practice then we believe that circuit judges should be ticketed to hear them.

9 Consultation Question 2:

Please provide your views below:
We note that domestic POs are currently dealt with by a panel of lay justices except where there is an objection to the application, in which case it goes before a circuit judge. However we share the concerns expressed by some lawyers and judges (6.48) about the current lack of scrutiny by some lay justices in PO applications. The LCs nevertheless point out that lay justices' courts are more geographically accessible and informal than are circuit judges' courts and that they anyway already hear challenging and difficult proceedings under the ACA 2002 (6.49). However PROGAR is of the view that the latter is not a straightforward comparison to make as social workers and other professionals whose primary focus is the child have typically been involved in ACA proceedings for some time and this is the basis for their reports to the court. In contrast, in surrogacy cases the only child-focussed professional involvement is typically that of Parental

Order Reporters (PORs). All PORs enter the process late in the day (i.e. post birth) and have far less contact with the IPs and child before preparing their report than is the case in ACA proceedings.

Views have also been expressed to us by some experienced PORs that their hands are tied when they see IPs who appear 'stuck' on disclosure matters and/or who are still wrestling with their infertility (where this is the reason for surrogacy) as they are limited to trying to further engage them in discussion while not significantly delaying the process and/or commenting on this in their report to court. While not a safeguarding issue per se and hence not grounds for the court to refuse to make a PO, this has implications for future family life. It is also of concern that a study with PORs found there could be confusion as to who the genetic parents were and hence what openness discussions with IPs needed to encompass (Crawshaw M, Purewal S, and van den Akker O (2013) 'Working at the margins: The views and experiences of court social workers on Parental Orders' work in surrogacy arrangements' British Journal of Social Work 43, 6, 1225-1243).

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

PROGAR is of the view that all such cases should be heard by circuit judges for the reasons set out above.

We note that the LCs propose that a circuit judge would hear all cases using the new pathway where a surrogate objects, and that seems sensible. These are complex matters.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:
PROGAR is fortunate to have included some with considerable practice experience of acting as PORs in its deliberations as well as some with practice experience through fertility counselling of working with people using both surrogacy and donor conception arrangements to form their families. Although many 'cases' can appear straightforward at the time, these professionals are aware of the acute lack of evidence of how the parties concerned and especially the surrogate-born individual will fare over their lifetimes. As experienced professionals, they know of the time lag that existed for such research and related knowledge and awareness to become available where adoption or donor conception by itself has been involved so are rightly cautious. Thus, for example, although IPs may express the intention to counsellors and PORs to be open with their child about their full origins, turning intention into action can be challenging (especially about the use of a donor or without outside support) and expressions of intent may anyway hide ambivalence or resistance to openness in any of the parties.

PROGAR has also been fortunate to draw on these professionals' experiences with some very complex cases that have required considerable input of time and specialist professional expertise including where the High Court Judges have rightly identified a public interest factor.

11 Consultation Question 4:

Yes

Please provide your views below:
YES, this makes sense and is something that we ourselves have considered pressing for, not least to enable the IPs to have greater powers to exercise while awaiting the outcome of the PO application. In our experience, the LCs are correct at 6.55 in saying that this practice is less common when matters are heard by lay justices. However we are also aware that in some cases the first directions hearing is some way down the line so there can still be a hiatus in which IPs do not have PR. We would support moves to ensure that the first directions hearing is reliably held quickly or to consider whether there is some other mechanism by which PR is shared by the surrogate from the outset..

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:
Progar is not in a position to comment on this beyond saying that we have long held concerns about the lack of requirement for curators ad litem to be qualified social workers and believe this should be rectified in any legislative change so that there is parity across the UK. As will be clear from our responses elsewhere, we strongly believe such professional expertise is of central importance.

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Other

Please provide your views below:
We have mixed views about whether there are any circumstances in which PROGAR would support the removal of the long standing principle that links legal parenthood and giving birth in surrogacy, with a substantial number deciding against. Regardless, we are all agreed that a strong case for its removal was not made in the document. The document is very light indeed in citing research-based evidence to support its removal and where research and journal articles are

used they are rarely critically appraised and are sometimes rather dated (for example feminist texts). Neither do we feel that the argument for the severance of the link is well made in terms of principles. We do not, for example, accept that the intentions of the parties concerned as to who should raise the child to be conceived should drive such a major change, much as we might understand and have sympathy with them. Neither, crucially, do we accept that surrogacy is closer to assisted conception than to adoption among the different routes to alternative family formation so have grave concerns about the appropriateness of the proposed scrutiny approaches that have been put forward as sufficient to warrant the link being severed and/or linked to intentions.

Although the document says that there are 'many' jurisdictions that may allow legal parenthood at birth for IPs, they only list 8 US States (out of 50) and 6 countries (7.91) so such moves are far from widespread. In other words it would appear that few jurisdictions have yet taken such steps.

We were disappointed not to see more attention given to alternative models, such as the temporary three parent option. Making such fundamental changes to birth registration require, in our view, much fuller debate about alternative models.

We also have reservations about the likelihood of the proposals leading to increased use of domestic surrogacy, as is the stated intention behind the proposals. Although PROGAR does not concern itself with 'supply and demand' matters per se, given that our core concern is for the lifespan welfare and well-being of individuals born through surrogacy and/or donor conception (and their families), we would support the balance shifting towards domestic arrangements where these use identity-release donors and/or lead to Parental Orders. However we note that a survey of UK clinics found that many were uneasy about involvement in surrogacy as they had found it, or anticipated it to be, complex and time-consuming and few appeared to have worked with male gay couples even though this is a growing group of potential IPs (Norton W., Crawshaw M., Hudson N., Culley L. and Law C. (2015) A survey of UK fertility clinics' approach to surrogacy arrangements Reproductive Biomedicine Online 31, 327-338). The Law Commissions' proposals, if anything, might increase those potentially inhibiting factors. Neither are we aware of any data from countries that prohibit commercial surrogacy that suggest how to improve the 'supply' of surrogates and egg donors without financial inducement, given that the proposal is to continue the ban on commercial surrogacy in the UK (which we support). We also note research findings that showed that the numbers of Parental Orders made without the involvement of UK surrogacy agencies dropped from 2007 to 2011 (Crawshaw M., Blyth E. and van den Akker O. 2012 'The changing profile of surrogacy in the UK – Implications for national and international policy and practice' Journal of Social Welfare and Family Law vol 34:3 265-275) and it is not clear of the extent to which this was affected by their capacity to handle the growing numbers.

That said, we believe that there is much of merit that is attached to the proposed new pathway, in particular the requirement for a pre-conception surrogacy agreement and the proposed introduction of regulation and a National Register. We also support the Law Commissions' proposal that traditional as well as gestational surrogacy should be included in it. And we can understand, and support, the need for a process to transfer legal parenthood to be effected much sooner than at present.

We set out our concerns in more detail below:

1. Placing undue weight on proposed scrutiny via pre-conception surrogacy agreements:
PROGAR has long supported the need for more attention to be paid to the time prior to conception so we welcomes this aspect of the proposals. We have regularly expressed concerns about the existing 'fait accompli' process whereby there is no independent child welfare scrutiny of the surrogacy arrangement until well after the child is born. However we are concerned that the proposed pre-surrogacy agreement is too limited for the following reasons:

a. We are unsure whether licensed clinics will be willing to take responsibility for 'signing off' the agreement but that will of course be for them to decide (8.7).
b. We have concerns at the portrayal of implications counselling in the document and say more about that in our responses to later questions. We believe that there has been some misunderstanding about its role and the responsibilities attached and these need addressing. For example, implications counselling does not and cannot deliver: 'information provided via implications counselling on legal, medical, emotional and practical aspects' (8.25). The document also inappropriately conflates 'implications counselling' (a term recently re-introduced in the Code of Practice for clinics in certain circumstances having been removed several years ago) with 'screening and scrutiny of eligibility' in surrogacy agencies.
c. There is at no point a requirement for anyone to be involved for whom the child is their core focus; this is of great concern given that there is some evidence that infertility counsellors can find it difficult to foreground the interests of the child (for a review see Crawshaw, M. and Daniels, K. 2018 Revisiting the use of 'counselling' as a means of preparing prospective parents to meet the emerging psychosocial needs of families that have used gamete donation Families, Relationships and Societies https://doi.org/10.1332/204674318X15313158773308). The same is likely to be true of other clinic professionals.
d. The document asserts (though without evidence) that low breakdowns result from screening and scrutiny whereas one might reasonably speculate that they are related to the ongoing support from surrogacy agencies (which will not be there if clinics alone are involved).
e. We could not find reference to any processes by which surrogacy agreements could be amended. Neither was it clear to us what happens if a couple separate during a pregnancy (though we accept it may be there in the document somewhere) rather than once the baby is born.
f. We are very concerned that there will be no further requirement on any bodies (including the 'responsible' clinic or surrogacy agency) to have contact with the parties at any future stage except to provide confirmation to the Birth Registrar that an agreement is in place. The birth may not be until many months or even years later (treatment may not start straightaway; there may be failed attempts; breaks from treatment may be needed) and there is no requirement to renew the agreement at any stage.
g. We strongly believe that there should be a required minimum level of contact right through until after birth and that there should be a requirement on the responsible body to engage with the parties should there be any difficulties along the way to try and help resolve them.
h. We do not consider it sufficient that a surrogate's provisional consent (for it can only be provisional and should be stated as such given that, rightly, it will not be enforceable) to the IPs becoming legal parents and her understanding of her right to object and the process for doing so is only contained within a pre-conception agreement.
i. We do not consider it sufficient to consider a provisional consent that is given months or years before the birth does not require the surrogate to be provided with written guidance about how to object in the latter stages of her pregnancy and the opportunity to discuss this with someone from the regulated clinic or agency. We also believe she should be required to actively restate her consent (in writing) at a minimum number of days post delivery. From the practice experience of some of us in adoption work with relinquishing birth mothers and post adoption work with adopted adults, we also believe that it might be beneficial for the surrogate herself and the surrogate-born child in later life to know that her consent was confirmed post delivery.
j. We could not see any reference to whether donors will be required to give specific consent to the use of their gametes in surrogacy arrangements and believe they should (it may be there but we could not find it).
k. There appears to be high weight attached to the views of surrogates and IPs, understandably, but there is nothing to say whether the views of donor-conceived adults and parents were sought from later life stages as such evidence would be of potentially transferable importance too (we understand you heard from at least

one surrogate-born adult). We also note that although the numbers recruited to the Surrogacy UK studies are commendable, they only represent a very small number of surrogates and IPs that have been involved in Parental Order processes since 1995 (see our later response to this too).
l. We note that surrogates and IPs are being asked to speculate about the impact of a very different system to the one that they themselves went through; this was not acknowledged. Neither was it clear how many surrogates and IPs that gave their views went through the process without any support from surrogacy agencies.
m. PROGAR has long advocated for attention to be paid to preparation for family life through alternative routes such as surrogacy and consider this more likely to lead to good outcomes than attempts to assess suitability to parent. Our social work colleagues understand how complex it is to conduct such suitability assessments where a child is as yet unborn let alone not yet conceived. Yet there is no requirement proposed in the document to provide preparation to IPs or surrogates.
n. It is clear from our contact with surrogacy agencies and your consultation document that surrogacy agencies provide a lot of help with preparation and then support IPs and surrogates through the time until well after birth and beyond. In the proposed model, those going solely through a clinic without the involvement of a regulated surrogacy agency will be deemed ready for the perceived advantages of the new pathway and this is of concern.
o. It is important in our view that there are standard requirements for surrogacy agreements and these should include the importance of openness with the children affected (e.g. whether being raised by IPs or surrogates) and the importance of the parties concerned notifying the National Register of any changes in their identity or in any genetic health conditions. In addition legal parenthood is known to be a complex area for HFEA clinics and others to understand. As we understand your proposals, there will be a requirement for surrogates and IPs to seek independent legal advice but some clinics may be concerned about their competence to then assess whether the parties have understood the implications of that legal advice as part of the scrutiny process ahead of 'signing off' a surrogacy agreement.
p. FINALLY AND IMPORTANTLY, we are concerned that there is no proposed mechanism for ensuring adherence to the pre-conception surrogacy agreement, including financial aspects, once the child has been born, for example a declaration to that effect by the parties (IPs and surrogates) post delivery.

2. Surrogates' right to object and birth registration process:

We are aware that there is a simplicity to tying the proposed changes to the birth registration system in terms of reducing the administrative burden (8.26) but do not find that to be a compelling reason for such a big policy shift. The reasons for agreeing timescales for birth registration were, of course, not designed with surrogacy in mind and leave the timescales very tight indeed. Experience from broader children's services' work suggests that recent requirements to work to shorter or arbitrary timescales are sometimes proving counter-productive to children's long term well-being. Although it is in no-one's interests to encounter avoidable delays in decision-making, there are also times when it is important to ensure that there is sufficient [reflective] process time to arrive at well made decisions.

Research on genetic and gestational surrogates' experiences following the birth of the baby has shown feelings of sadness and loss are not uncommonly experienced, particularly in traditional surrogates, suggesting their long term (mental) health also needs to be given due attention. Rushing this deeply personal process through, particularly if decisions need to be made pre-conception when surrogates will not yet have any idea how much they have attached to the foetus, will not be in the interests of the surrogates (see for example van den Akker, O. (2005) 'A longitudinal pre pregnancy to post delivery comparison of Genetic and gestational surrogate and intended mothers: Confidence and Gynecology'.J Psychosomatic Obstetrics and Gynecology, 26,4, 277-284; van den Akker, O.B.A (2007) Psychosocial aspects of Surrogate Motherhood Human Reproduction Update, 13,1, 53-62 http://humupd.oxfordjournals.org/cgi/reprint/13/1/53; van den Akker,O.B.A. (2007) Psychological trait and state characteristics, social support and attitudes to the surrogate pregnancy and baby. Human Reproduction, 22,8, 2287-2295; van den Akker,O.B.A (2003) 'Genetic and gestational surrogate mothers' experience of surrogacy' Journal of Reproductive and Infant Psychology 21, 2 / 145 – 161).

As well as our concerns regarding consent by surrogates set out above, we also believe that the proposed length of the 'right to object' is simply too short. As we understand it, it would be two weeks in Scotland and five weeks in England and Wales. There are various processes that will need to be undertaken including supplying the Registrar with the surrogacy agreement and confirming from the National Register that all details are fully entered and there is no provision for slippage on this. We have also said above that we feel strongly that the surrogate should actively consent at this stage rather than by default through not objecting (her consent pre-conception can only be provisional) and there should be a minimum time post delivery before she can do so. The surrogate should also be provided with a clear written explanation of the process for objecting and confirmation supplied that she has received it (this could be included as part of the consent form).

We would have expected to see some consideration of whether there are any wider policy implications of such a major upheaval to birth registration rules.

3. Conceptualisation of surrogacy:

As stated in the early part of our response to this question, we challenge the underlying premise that surrogacy is closer to assisted conception than adoption (indeed in at least two places the document goes further by saying that anyone conceiving naturally does not have to go through pre conception safeguards). We do not consider that a robust case has been made for claiming this, even though it is the foundation of the proposal to grant legal parenthood to IPs at birth registration. It is our firm view that there is a continuum between natural conception and adoption with surrogacy sitting between donor conception and adoption on that continuum. In our view, you fail to acknowledge that surrogacy, importantly, involves a third party – a surrogate - carrying the pregnancy (often after undergoing medical procedures), giving birth and relinquishing the baby. Apart from the additional potential emotional complications that might arise when pregnancy and birth is not experienced by the parents who go on to raise the child, there is a growing body of evidence of the potential significance of the foetal environment for the child as well as the surrogate and our understanding of the significance of an immediate separation between infant and carrying mother remains limited (see our later responses on this too) (see for example: Petri,E, et al. (2018) Maternal–foetal attachment independently predicts the quality of maternal–infant bonding and post-partum psychopathology, The Journal of Maternal-Fetal & Neonatal Medicine, 31:23, 3153-3159; Siddiqui,A. Hägglöf, B. (2000) Does maternal prenatal attachment predict postnatal mother–infant interaction? Early Human Development, 59 (1) 13-25, ISSN 0378-3782; Schenkel, E et al. (2015) A cross-cultural study on surrogate mother's empathy and maternal–foetal attachment. Women and Birth 28(2), 154-159;van den Akker, O.B.A. (2017) Surrogate Motherhood Families. Palgrave MacMillan, particularly pages 99-102). We are quite simply in unchartered waters here with emerging evidence suggesting much more is yet to be understood, including about the lifespan implications for relationships within the new family. Such features are not present in donor conception where the pregnancy and birth is experienced only by the IPs and may therefore be an important mediating factor. Of course we cannot provide extensive evidence for our view any more than you have for your conceptualisation but we firmly believe these factors potentially complicate the situation sufficiently to look both ways – to adoption and to DC – when considering a way forward.

Looking to adoption might also help suggest the potential wider implications of conceptualising surrogacy in this way. By using 'intentions' as a primary driver for such change, some might argue for a return to private arrangements for the relinquishment of a baby to adopters where the woman decided early in the pregnancy that she intended to relinquish the baby for adoption, a voluntary process. Although of course different to surrogacy, some might argue that the differences are smaller than adoptions from care where the state has a clear statutory duty.

4. Approach to risk:
We also have concerns at the approach to risk used in the document. In the field of assisted conception other than IVF with own gametes, there are currently no findings from large scale, longitudinal studies from which to assess risk to well-being of offspring. However at 7.76, the document states that it knows of no evidence that surrogate-born children are at any greater risk than those being raised by their gestational mother. That is true but so is the statement that there is no evidence that they are at comparable or lower risk. The reality is that there are no data to help us with this: the very small amount of existing data on outcomes is too small and carries significant limitations so do relatively little to help us. For example the research from the Cambridge Centre for Family Research (who are to be applauded for carrying out their studies as they stand out as relatively unique) cannot be generalised given the small size of the samples and the fact that new families were recruited over time to replace those who dropped out thus making them cross sectional in design rather than longitudinal in the usual sense. The report in the document of the study with children of surrogates again did not point that only very small numbers took part. The researchers themselves cite such limitations. However in other places, research is critiqued and it is not clear why this happened for some studies and not others. For example at 7.49 it is noted that the study relies on self reporting by pregnant women through questionnaires but it would not be possible to study pre natal attachment in non-pregnant women and the study, as far as we aware, used reliable and valid measures so should not be dismissed in this way. In that same section, the document states 'the very idea that there is a special bond has been questioned: can the foetus, before birth, really be said to form an attachment to the mother, separate from the mother simply imagining herself as a mother and caregiver?' without referring to the emerging evidence of the potential significance of the relationship between the carrying mother and the foetus: we use the term 'relationship' rather than the rather emotive term 'special bond' to signify that the relationship may have a range of aspects of potential influence. We have similar concerns about an assertion at 7.78 without backing evidence: that it will be better for children to remove the current temporary [our word] split between legal and social/psychological parenthood and here again we respond to this in more detail in a later response.
In addition to the lack of empirical research there are no mechanisms currently for collecting national data on surrogate- or DC-born children who later come to the attention of Children's Services, CAMHS, or courts. This is not to say that we believe that there is heightened risk but more to say that the statements in the document are too selective and hence present an incomplete and unbalanced picture.
We believe that the gaps in our knowledge are such that the precautionary principle should be in use here (https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA(2015)573876).

SEE ALSO LATER RESPONSES

15 Consultation Question 8:

Yes

Please provide your views below:
YES and it should be specified as to what should be included in these records. We note that a copy of the surrogacy agreement itself and a copy of any post delivery objection by the surrogate should be held by the proposed National Register and we support that.

We also believe that a copy of any post delivery objection by the surrogate should be placed on the records held by the regulated surrogacy organisation or licensed clinic involved as well as held by the national Regulator (see our answer to Q11).

It will be important to ensure that there are no discrepancies in the records held in each place.

The duty should also specify what happens to the records should the clinic or agency close down.

100 years; or

Please provide your views below:
It should be for 100 years and kept in line with any changes to storage requirements for adoption records.

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.Do consultees agree?

Yes

Please provide your views below:
YES. Unlike the LCs we do not consider this question to be finely balanced (8.20). We share the LCs' view of the importance of surrogate-born and donor-conceived people to have access to full information about their genetic and gestational origins. As such we welcome all moves to deter the use of anonymously donated gametes. We are of course aware that people can access overseas treatment that uses anonymous donors and that they can import or otherwise obtain gametes for self insemination here. However we do not consider this to provide a straight comparison: as we set out in our response to Q7, surrogacy has features that are unique as well as ones that complementary to donor conception. The involvement of a surrogate to carry the pregnancy and give birth to the baby whom she then relinquishes to the IPs and eventually relinquishes her legal parenthood adds complexity to the situation for all parties and especially the surrogate-born person.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:
YES it is important that we strongly discourage the use of anonymously donated sperm (or eggs or embryos for that matter). This is irrespective of whether the sperm is imported for use in the UK, obtained within the UK or whether the surrogate goes overseas for insemination. The surrogate-born child would have no statutory right of access to information about the sperm provider (i.e. their genetic/biological father) and we consider that to be a major concern and against what Parliament intended in its decisions regarding access to information for donor-conceived people. This makes it crucial that the parties concerned are seen by a Parental Order Reporter whose primary concern is the welfare of the surrogate-born child – and that UK law and regulations are consistent in their requirement for identity-release donation only.

18 Consultation Question 11:

Other

Please provide your views below:
We strongly believe that the proposed objection period is too short as we set out in our response to Q7 (where we also set out our other concerns about the acquisition of legal parenthood at birth). We are also concerned that you are not consulting on your proposal that the surrogate should only be required to provide her consent pre-conception. We consider the latter to be an inadequate safeguard; post delivery consent should be active not by default and any consent prior to conception should only ever be provisional and this should be made clear in any surrogacy agreement.

We also consider it is likely to be important for the surrogate-born person to know that their gestational/genetic mother confirmed her consent once s/he had been born. Between us, we have considerable practice experience in the post adoption field, where there are parallels insofar as a person is raised by someone other than the woman who carried them through pregnancy and gave birth to them. Our experience is that it can be very important not only for the birth mother's long term well-being that she formally consented post delivery but also for the adopted person.

We believe that your proposal at 8.28 that GRO 'should' contact the clinic or surrogacy agency for confirmation that a surrogacy agreement is in place needs strengthening and should instead be made mandatory. We also believe it should be mandatory for the health professional/Trust sending the birth notification to the GRO to make clear on the notification that surrogacy arrangements were involved.

Under the current proposals, in order to exercise her right to object the surrogate must inform (i) IPs and (ii) the Regulatory body (HFEA). There is no mention of any requirement on anyone to inform the 'responsible' clinic or surrogacy agency and we believe this should be a requirement on the National Register. At the very least, there could be valuable learning for the clinics and surrogacy agencies from being informed.

19 Consultation Question 12:

Yes

Please provide your views below:

20 Consultation Question 13:

Other

Please provide your views below:
Although we agree with what we consider to be the principles behind this (that the surrogate should have capacity during their period and this must be demonstrated) we have concerns about the proposal to ask IPs to make the required declaration and to only ask the surrogate if they fail to do so. Capacity is a potentially complex matter and clearly one which raises the spectre of the potential for exploitation, including for example if the surrogate has mental health difficulties, learning disabilities or does not share a language with the IPs. If there is any conflict of interest or risk of exploitation (which in many cases of course there won't be) then it is likely to be between the IPs and the surrogate, hence our concern about giving them the primary responsibility to make the declaration. As we said earlier (responses to Qs7 and 11), we strongly prefer an alternative system which would require the surrogate to provide her (active) formal consent post delivery, in which case the question of capacity is covered. There would still need to be a way of handling loss of capacity of the surrogate and we suggest this would need to be by exiting the new pathway.

21 Consultation Question 14:

Other

Please provide your views below:
SEE ALSO OUR RESPONSE TO Q22
With the proposed removal of the child welfare post birth assessment, our concern is that there will be no professionals or staff involved at any stage of the process whose core focus is the child. At the very least we believe there is a need for significant strengthening of the Welfare of the Child assessment and implications counselling processes, the possible need for further training for clinic or surrogacy agency staff, and the required involvement pre conception of those whose core focus is the child. For example the latter might be provided by a qualified social worker such as from Cafcass. Clinics, for example, are not generally qualified to undertake the kind of welfare of the child assessments that a social care agency might consider to be sufficient for those considering an alternative route to family life through the use of surrogacy. They are reactive to any information that gives rise to concern but, apart from taking account of a counsellor's report (if one is prepared, and this is not universal practice), not proactive in this regard. Unless the counsellor comes from a social work background, s/he is unlikely to have any training in such assessments. In fact, the HF&E Act requires clinics to assume that patients are able to offer supportive parenting unless there is evidence to the contrary.

Currently there is variation in the approaches that clinics (and counsellors) take, as evidenced in the recent discussions within BICA ahead of the publication of its Guidelines for Fertility Counselling: Fourth Edition in May 2019. Some counsellors see the parties to surrogacy with a view to writing a factual report for the clinic team of what has been discussed in the session and the clients' circumstances, attitudes, expectations, relationships with the other parties that does not contain a

recommendation or assessment. However some counsellors do not accept that this is an appropriate role for them so would only advise the team if a matter of serious concern arose. Some other counsellors, however, are prepared to go further and make a recommendation – though BICA guidance makes clear that if they do so, they are not acting within their counsellor role and therefore the clinic should make available an alternative counsellor to provide implications counselling sessions for each of the parties. There are no data available as to the relative frequency with which this range of approaches is taken.

At present, there is also only a requirement to approach the GP for the surrogate whereas it is optional as to whether to approach the GPs for the IPs (as part of a Welfare of the Child assessment). We believe this is wholly inappropriate when viewed through the lens of the surrogate-born child. We are also aware that the self declaration form currently in use carries the potential for information to be omitted, either deliberately or because the person concerned believes any previous convictions, involvement with Children's Services, the Police, substance misuse or domestic violence and so on to be 'spent'. We are aware of at least one recent case where this led to no confirming information being sought from any external agency and no 'assessment' beyond completing the questionnaire being undertaken even though it later emerged that the person had a significant history of concern. As far as we are aware, any such 'breaches' are not documented by the HFEA and some anyway undoubtedly go undetected so it is not possible to quantify them. This can lead to those that complete the WOC forms honestly and accurately sometimes being subjected to a thorough WOC assessment and those that inaccurately complete the form not. A more standardised approach is thus important as well as fair, in our view.

Also, and very importantly, if a clinic identifies a party as presenting with issues that raise significant safeguarding/WOC concerns, it can only prevent that person from being treated at their clinic. There is nothing to stop the person from attending another clinic and withholding information on the WOC form that gave the first clinic cause for concern. In similar vein, there is currently no requirement for IPs to declare whether or not they have been turned down by an adoption agency and this too could be important information. This is not to say that everyone in this situation cannot be considered for surrogacy but that it is an important piece of information to look into.

We welcome the proposal to make compulsory that IPs and surrogates and their partners should have criminal records checks but of course this is of limited use.

Finally we are aware that some counsellors believe there is a need for specialist training/specialist skills for staff taking on the surrogacy assessment roles in clinics. And at least one clinic is now having to negotiate a formal Information Sharing Agreement with their local Probation Service who was unwilling to release requested information to them otherwise. We suspect that other clinics may need to set these up with external agencies as WoC assessments become more rigorous.

All this leads us to have concerns that the Law Commissions are placing a reliance on the clinics being competent to do this work which is not based on current reality; not all clinics welcome the opportunity to do this work and/or some find it challenging (Norton W., Crawshaw, M., Hudson, N., Culley, L. and Law, L (2015) A survey of UK fertility clinics' approach to surrogacy arrangements Reproductive Biomedicine Online 31, 327-338). The question also arises as to whether there is equivalence between clinics and the surrogacy agencies even at this pre-conception stage, though this is presumably something that a national regulator would need to take responsibility for.

The proposal that all responsible bodies work to the CoP requirements for counsellors undertaking implications counselling sessions themselves has some merit. However it will be important that this does not dilute the preparation work that some surrogacy agencies undertake and which clinics do not. Indeed there is room for further discussion as to whether there should be a shift to focussing on psycho-educational approaches (see Crawshaw, M. and Daniels, K. (2018) Revisiting the use of 'counselling' as a means of preparing prospective parents to meet the emerging psychosocial needs of families that have used gamete donation Families, Relationships and Societies https://doi.org/10.1332/204674318X15313158773308). PROGAR strongly supports the need for mandated preparation sessions to be offered to all the parties prior to an agreement being finalised, as well as support during the process through until post delivery. In a study with PORs, it was noted that many considered IPs to have been inadequately prepared (Purewal S, Crawshaw M and van den Akker O (2012) 'Completing the surrogate motherhood process: The experiences of Parental Order Reporters' Human Fertility 15(2); 94-99).

Of course some parties will need relatively little counselling or preparation but there should be minimum standards in place. This would also go some way to ensuring good levels of understanding of what is in the surrogacy agreement once a real pregnancy and live child are there.

Finally we had mixed views about whether there should continue to be a post birth welfare assessment in all circumstances under the new pathway with some favouring it being retained for all, some favouring the option for it to be carried out in certain circumstances and some undecided or content for it to be removed. There was, however, clear agreement among us that there was an over-reliance on the robustness of pre-birth agreements in the format proposed in the consultation document, for the reasons we set out elsewhere and that these need addressing in the interests of the child. These include the lack of involvement of qualified social workers experienced in child welfare assessments, the (in our view) misunderstanding of current approaches to implications counselling and Welfare of the Child checks, the lack of any requirement for ongoing contact once the pre-conception agreement is signed, the lack of any post delivery check that the terms of the pre-conception surrogacy agreement (including financial aspects) have been kept, the lack of a requirement for obtaining the active consent of the surrogate post delivery, and the fact that some aspects of the situation could be picked up in the reality of the child being with the IPs that could not be fully anticipated pre-conception.

22 Consultation Question 15:

Yes

Please provide your views below:
YES; some PORs report that this aligns with their experience that the surrogate's spouse or civil partner rarely wishes to be afforded legal parenthood and hence to be required to consent to its transfer. However if the child goes on to be raised in the surrogate's family then we would expect consideration to be given by the court as to whether the surrogate's spouse or partner should be afforded some legal responsibilities (i.e. other than legal parenthood) in relation to the child.

Other

Please share your views below:
We had mixed views on this although we can see that the lack of safeguards in arrangements made outside the new pathway may warrant greater caution about removing legal parenthood from them, especially when no surrogacy agreement is in place.

23 Consultation Question 16:

Other

Please provide your views below:
We believe there should be consistency of rules so whatever is agreed for a live birth should also apply here given that stillbirth is treated as the death of a baby in utero rather than the death of a foetus which is the case where pregnancy ends earlier than 24 weeks.

However in keeping with our position as stated earlier, we strongly believe that this must include the active consent of the surrogate in all such cases.
We believe that the stillbirth should also be noted in the records held by the regulated surrogacy agency or clinic.

This situation requires attention to the grieving of all parties involved, not just the IPs – as well as the surrogate, this might also include children and wider family members who are affected.

Other

Please provide your views below:
As above and please also see our response to Q15.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.Do consultees agree?

Other

Please provide your views below:
We found this wording somewhat unclear and therefore sought clarification from the LC for England and Wales in emails. Our answer reflects what we believe the question to be:
• Where a child is born outside the new pathway then the surrogate will be the legal parent (and possibly one other person, depending on the situation). The scenario above covers what happens if the child dies either before the birth has been registered or after birth registration but before a Parental Order is made. In both situations, we are inclined to believe that the child's birth certificate must reflect the existing law in indicating who the legal parents are. We are anyway unclear how it is envisaged that legal parentage could be transferred to IPs whether or not the birth has already been registered. If it were to be some form of expedited PO to allow the transfer then we might support that (but are not sure if it's feasible). In any case, we strongly believe that there must be a minimum time set before which the surrogate can provide her consent as such decisions will be especially fraught in such a context.

We also raised with the LC a possible anomaly in relation to a child born within the new pathway. This refers to a situation in which the child dies before the IPs register the birth and within the time in which the surrogate could object (similar to Q16 but here covering infant death rather than stillbirth). This situation was not covered in the document therefore needs consideration.

This situation requires attention to the grieving of all parties involved, not just the IPs – as well as the surrogate, this might also include children and wider family members who are affected.

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:
Another difficult scenario and thankfully a very rare one to contemplate. It seems harsh in such a situation to expect the IPs to then drop out of the new pathway if there is some way of knowing reliably what the surrogate's views were immediately prior to her death, perhaps if there had been recent contact with the regulated agency or clinic. It will also be very important to involve the surrogate's partner (if she has one) or family: if traditional surrogacy was involved, the child will be genetically related to some of the surrogate's family of course.

Given that reliably ascertaining the surrogate's wishes may not be possible and given the additional complexity in traditional surrogacy, dropping out of the pathway would appear sensible, with the POR/Children's Guardian tasked to conduct a sensitive investigation. A PO would be granted if in the best interests of the child. If not the Judge has the option of granting s8 orders under the 1989 Children Act that bestow parental responsibility upon the partner of the deceased surrogate, the grandparents or others: that should be the decision of the court. Adoption is also an option though the process is more complex.

26 Consultation Question 19:

Other

Please provide your views below:
Another very difficult scenario to contemplate. If both IPs die during the pregnancy, then the appointed testamentary guardians (it is our view that it should be a requirement that testamentary guardians are appointed under the new pathway) for the child would assume PR on the child's birth. The surrogate rightly would still have a period after the birth to object to the IPs being registered on the birth certificate. If she so objects, she would become the legal parent and can register the birth. In these circumstances, if the testamentary guardians or members of the IPs' family seek to take care of the child, they would be able to apply under the Children Act or Adoption and Children Act legislation for appropriate orders and the court will decide the outcome.

Please provide your views below:
We are inclined towards saying the surrogate should be the legal mother and support 1(a) and (2). We do not believe that it would be particularly helpful for the child for a PO to be granted posthumously.

27 Consultation Question 20:

Yes

Please provide your views below:
This appears sensible. We do have some concerns about the length of time afforded to an estranged IP to provide notice of opposition and to then subsequently make his or her own application; the latter seems especially short.

We also think it important for there to be a requirement to inform the surrogate if a couple separate (whether in the new pathway or outside it) as this could be important information for her to have as part of her consent decision-making.

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:
As seen from our earlier responses, PROGAR is divided over the proposed new pathway, but with a majority being against allowing the IPs being legal parents in the proposed model.

PROGAR is very interested in the idea of a temporary three parent model and was disappointed that it was not covered in more detail in the consultation document as it appears to have merit. We do not ourselves have the resources to explore it in more detail but strongly believe it should be taken further.

29 Consultation Question 22:

Please provide your views below:
SEE ALSO OUR RESPONSE TO Q14
As we said in our earlier comments, we are concerned that the pre-conception scrutiny and preparation proposals are inadequate in parts, including the omission of anyone involved for whom the child is their core focus; that the lack of any requirement to maintain contact with the parties during pregnancy and post delivery is of grave concern; and that the lack of a requirement for the surrogate to actively consent is very worrying. We have elsewhere suggested that there should be social work involvement in the pre conception stages. A majority of us also felt that it could be detrimental to remove any requirement for a post delivery independent social work assessment.

We strongly believe that the removal at any stage of professionals whose core concern (and experience) is with the welfare of the child is a retrograde step. The emphasis on 'implications counselling' misses the fact that this is a service for the surrogate and IPs with the aim to help them arrive at an informed decision. This could result in a situation where IPs, for example, decide against openness – a situation that child-focussed professionals would consider a barrier. Counsellors are therefore only required to raise concerns if they believe there are potential safeguarding matters and that is a very high threshold. In addition we have concerns at how thoroughly the HFEA currently inspects counselling provision: it does not include counselling professionals in its inspection teams, it does not automatically see the clinics' counsellors during inspections, and rarely uses its specialist Advisers. Because it is only the 'offer' of counselling that is currently a statutory requirement, the HFEA has traditionally been reluctant to set minimum standards for provision and uptake of counselling, leading to significant differences between clinics. We have similar concerns about Welfare of the Child procedures which also appear to vary between clinics and concerning which the HFEA sets quite low level requirements. It is of note that in the recent process to update the BICA Guidelines for Fertility Counselling this year, the discussions surrounding 'welfare of the child' and 'implications counselling' practices were the ones that took up most time and showed the widest variation.

We are aware that in some countries such as New Zealand, all applications to enter surrogacy arrangements go through a national ethics process (as do those involving embryo donation). It would have been useful to know more about other countries' scrutiny processes in these early stages of deciding whether such arrangements can go ahead. We understand that Surrogacy UK has also recently introduced an ethics committee to look at applications referred by the Trustees because they are complex in some way. This may warrant further consideration. We note that the document rejected the idea of an Adoption Panel but we believe that the New Zealand and Surrogacy UK models may warrant further exploration as a proportionate response.
It was also interesting to see that New Zealand (p187) requires 'consideration of the comparative abilities of each of the parties to be… parents…. And to facilitate relationships with other parties should the court consider that necessary'. It is clear from this that they see surrogacy as a route to family life that requires attention to additional aspects, supporting our view that it is closer to adoption than assisted conception.

PROGAR considers mandated preparation to be an important part of alternative routes to family life, be that through donor conception or surrogacy. Parenting DC and surrogate-born children brings additional tasks which prospective parents need to prepare for, not least as this can also have the effect of better grounding any decisions that they make about whether to proceed. There is a wide research- and practice- based literature to support such a view (see for example that covered in Crawshaw, M. and Daniels, K. (2018) Revisiting the use of 'counselling' as a means of preparing prospective parents to meet the emerging psychosocial needs of families that have used gamete donation Families, Relationships and Societies https://doi.org/10.1332/204674318X15313158773308).

30 Consultation Question 23:

Please provide your views below:
PROGAR is of the view that the 'welfare checklist' works well at present and does not need substantial amendment. This is based on the experiences of those of us with extensive experience in this field.

31 Consultation Question 24:

Please provide your views below:
PROGAR is of the view that the checklist works well at present and does not need substantial amendment. This is based on the experiences of those of us with extensive experience in this field.

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:
YES, we believe this would be sensible and helpful all round

33 Consultation Question 26:

Other

Please provide your views below:
There is nothing here to say who would decide whether a surrogacy arrangement had been involved as a precursor to any automatic acquisition of parental responsibility as proposed here. Will this be self declaration? If so to whom and when? Will it be triggered, for example, by birth registration? We also have concerns about the wording at (2) and believe that applying for a PO should be a requirement rather than only an intention and that there should be a requirement on a statutory body/bodies to monitor whether an application is indeed made and, if not, to investigate.

We were unsure whether this proposal was intended to replace the proposal at Q4?

34 Consultation Question 27:

Yes

Please provide your views below:
YES – but as in our response to Q26, we believe that at (2) applying for a PO should be a requirement rather than only an intention and that there should be a requirement on a statutory body/bodies to monitor whether an application is indeed made and, if not, to investigate. Of course in a scenario such as this, it is highly likely that the IPs will make such an application very quickly but it is nevertheless important in our view to strengthen the language.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.Do consultees agree?

Yes

Please provide your views below:
YES – although as you will see from our answers elsewhere, we strongly believe that the surrogate should actively consent rather than simply fail to object. If the new pathway were to go ahead then we suggest the date of the registration of the birth would be the obvious time for the surrogate's PR to lapse.

36 Consultation Question 29:

Please provide your views below:
We do not hold strong views on this. We assume that any disputes would need to be dealt with by S8 Orders.

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.Do consultees agree?

Other

Please provide your views below:
We had mixed views on this. Some of us felt deeply concerned at asking a traditional surrogate to supply even provisional consent pre-conception to allowing the IPs to become legal parents at birth instead of her. Others felt that there should be no such difference applied and that the decision was equally complex and demanding for both traditional and gestational surrogates, albeit with unique aspects to each as well as similarities. These are complex ethical issues and surrogates will inevitably be at a psychological disadvantage in any circumstances in which they have committed to the IPs being the legal parents from birth but find that the reality makes this unacceptable either during the pregnancy or post delivery.

Among those of us with direct practice experience there were some examples of IPs intimidating surrogates, especially when there is a significant difference in socio-economic status as is often the case (a fact that is noted in the consultation document but generally given little attention otherwise). There did not seem to be a pattern whereby this was more or less likely in the case of traditional surrogacy. Of course we are aware of the potential for intimidation in the reverse direction but had less experience reported of that.

What strikes us in considering this and in reading the consultation document – including about the pros and cons of the different types of surrogacy (for example pp196-9) – is the lack of reference to the lifespan implications of each type for the surrogate-born person as a key factor. This is the starting point for PROGAR.

This perhaps contributed to what we perceived as an implicit assumption in the document that clinics would not engage in traditional surrogacy and so little attention should be paid to how to encourage them to become more engaged, even though sizeable numbers appear to offer it (see Norton W., Crawshaw M.,

Hudson N., Culley L. and Law C. (2015) A survey of UK fertility clinics' approach to surrogacy arrangements Reproductive Biomedicine Online 31, 327-338).

In fact we also had some concerns about the use of language in parts which carried the potential to reinforce the 'divide' between traditional and gestational surrogacy – though we note and support the LCs' view that both should continue. For example the document says that gestational surrogacy is potentially riskier for the surrogate and for the woman providing the eggs (9.18). It's not they are potentially riskier, they ARE riskier, i.e. they carry greater risk than does traditional surrogacy. For example, there is an association between oocyte donation and low birthweight, pregnancy complications and caesarean sections (Savasi et al., 2016 Maternal and fetal outcomes in oocyte donation pregnancies. Human Reproduction, 22(5), 620–633). Since gestational surrogates undergo embryo transfer with 'donated' oocytes (from the commissioning mother or a donor) these pregnancies are likely to be at the same risks as oocyte recipients and their babies in IVF treated cycles. The document also talks of the risks (unspecified) that the children would be the half sibling of the surrogate's own children but not about the benefits of this and does not refer to the potential risk that arises where surrogate-born children have unknown genetic half siblings as a result of egg donation being involved (9.23).

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:
NO we don't believe they should. Further we don't consider feasible or appropriate the suggestion (at 9.33) that the HFEA might provide oversight of screening and eligibility requirements in independent arrangements or (at 9.34) that this role might be undertaken by an independent professional such as a lawyer. These are complex matters that require the skills of a range of professionals, including (centrally) those with child welfare experience.

We were surprised to read at 9.30 that independent surrogacy arrangements are the ones most likely to break down as one of the problems in determining surrogacy policy and practice is the lack of data. As far as we are aware, there are no data about breakdowns in arrangements – indeed some will never be recorded anywhere, let alone by type, so such a statement is at best misleading.

Please provide your views below:
Given our response to the question above, we do not consider there to be any ways in which this could be achieved.

40 Consultation Question 33:

Yes

Please provide your views below:
We strongly agree that there should be regulation and that each surrogacy organisation should be required to have a 'person responsible'. We note that licensed clinics will be required to meet certain responsibilities in relation to surrogacy and we suggest that this should be reflected in their staffing requirements as we set out in our responses to subsequent questions. While inclined to support the proposal at (2) please also see our response to Q35.

While not wanting to burden surrogacy organisations with undue requirements, we have said earlier than we consider surrogacy to be closer to adoption than to IVF alone for the reasons that we set out at Q7 and that regulation should therefore be more than 'light touch'. We support the fact that volunteer input is a significant and positive feature of some of the organisations such as Surrogacy UK and note that regulation will incur additional tasks for them.

We also note that at 9.58 the document refers to surrogacy organisations providing ongoing support through conception, pregnancy and after the birth of the child'. This reinforces, we believe, our earlier concerns that where clinics are the body deemed responsible for pre-conception surrogacy agreements in the proposed new pathway, no such requirement is placed on them.

Yes

Please provide your views below:
While inclined to support the proposal at (2) please also see our response to Q35.

Yes

Please provide your views below:

41 Consultation Question 34:

representing the organisation to, and liaising with, the regulator;, managing the regulated surrogacy organisation with sufficient care, competence and skill;, ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;, training any staff, including that of the person responsible; and, providing data to the regulator and to such other person as required by law.

Please provide your views below:
YES though it seems rather odd that this means someone may have to train themselves!

Please provide your views below:

Please provide your views below:

We believe that the ‘person responsible’ should be required to demonstrate their competence and understanding in child welfare and safeguarding. As such we would expect them to have experience in child and family work and an understanding of child welfare legislation and/or employ senior staff with this experience. This would reflect the fact that surrogacy is, in our view, the closest route to alternative family formation to adoption.

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Yes

Please provide your views below:
YES, there is no place for commercialism in surrogacy in our view. However care will need to be taken to ensure that ‘not for profit’ does not enable a back door approach to commercial activity. Otherwise there is a danger that organisations will seek to charge whatever the market can afford and there is already a very real issue in surrogacy whereby it is increasingly only open to high income prospective parents to pursue. It was recently reported, for example, that one ‘not for profit’ surrogacy agency based in Australia earned $2 million Australian dollars in revenue in the past five years from sponsorships, consulting fees and event ticket sales - https://www.abc.net.au/news/2019-08-21/australian-parents-warn-about-ukraine-surrogacy-lotus/11426396

We note that at least half of licensed clinics in the UK are now privately operated.

43 Consultation Question 36: We invite consultees’ views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:
This should include any activities related to recruitment, introduction, support, written agreements, criminal records checks. We support the proposal that where private fertility clinics carry out such activities then they should be required to set up a separate ‘not for profit business arm’ in order to do so. Indeed we would like to see this extended to their gamete donor services.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:
We are inclined to agree with this proposal though are also aware of some apparently successful arrangements made between IPs and relatives or longstanding close friends without outside help and would welcome the opportunity for these to continue as we believe they fall outside the definition of ‘matching and facilitation’.

We are unsure what will happen when the use of a gamete egg donor is required. This will be an important part of the arrangement from the perspective of the surrogate-born person and will also involve what might be called a ‘matching’ process. See also our response to Q36.

Here again, as seen before, the consultation document makes reference to the requirement on surrogacy agencies to provide support through until after the birth of the child (9.86(3)) even though there is no such requirement on clinics. We believe the same requirement should be made on whichever organisation is the ‘responsible’ body for a surrogacy agreement.

45 Consultation Question 37: We invite consultees’ views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:
We are inclined to agree as this will at least provide some regulation for some surrogacy arrangements outside the new pathway (but see also our response immediately above). However it will only be enforceable if there are some powers given to sanction and/or shut down unregulated ‘services’.

46 Consultation Question 38: We invite consultees’ views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:
This is outside our competence to answer save to say that they need to be sufficiently strong to act as a deterrent. We agree that it should be an organisation or ‘broker’ that should be sanctioned not the prospective IPs or surrogates.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:
YES but with caveats. In keeping with our earlier answers, the HFEA will need to significantly improve its regulation of counselling standards and take up and significantly increase its social work/child welfare expertise, including on the Licensing Panel. ‘Welfare of the child’ assessments will need to be significantly strengthened, including that counsellors should not be required to undertake them.

Please provide your views below:
The areas of the Code that should apply should include: the PR, counselling, WoC, medical checks, information to be provided, consent, information access

rights as well as all those parts that apply to donor conception and surrogacy. We also propose that there should also be a new requirement to provide mandated preparation sessions and minimum standards of ongoing contact with all parties through until post delivery.

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:
YES. We especially support those aspects of the explanation at 9.126 that make clear that the legal status of the child is something that should remain for the law to decide, not something to be negotiated between private individuals. We strongly support that even a pre-conception surrogacy agreement such as that proposed can only ever remain an expression of intention.

We were interested to see the assertion at 9.124 that any issues are usually resolved by negotiation between lawyers for the parties as we are not aware of the evidence for this. We also note the research finding that you cite at 9.122 and suggest this is an example of how important it is to critically appraise research. It is not unusual, for example, for on-line survey responses to throw up findings that are difficult to interpret.

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:
YES but, as with our response to earlier questions in this section, there needs to be some safeguards against commercial activity masquerading as 'not for profit'.

We have concerns that the proposal to allow regulated organisations (including private clinics) to be able to charge for all their services, including screening, counselling and welfare assessment, may put services even further out of reach of those on middle to low incomes. It is not clear to us, for example, why private clinics could be required to set up a 'not for profit' business section for matching and facilitation services but not for the rest.

One danger with this is that there will be no incentive for organisations to do these activities well rather than to a bare minimum (if they want to keep fees low and attractive); and conversely some may set high fees and cater to only high income clients. Attention needs to be paid to this through rigorous regulation and allowing the regulator to the power to set at least some of the fees.

The underlying principle should always be that surrogate-born children – as with all children - are not commodities to be 'bought' and 'sold' at any stage.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:
YES, but at the least, this should be in line with what is allowed for adoption and there should be restrictions as to which organisations are allowed to advertise in the UK.

On reading the document at 9.142, it was a timely reminder (and indeed news to some of us) that it is only UK people caught advertising in the UK that can be prosecuted not those operating overseas commercially and advertising here. We believe this is a loophole that needs to be shut down if we are serious about maintaining a ban on commercial surrogacy.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:
YES but we also suggest that there is a strong case for enabling them to do so earlier, on request and subject to safeguards, as is now possible in adoption.

We were very concerned to learn at 10.32 that the surrogate-born person's right to access their original birth certificate was removed (or not enacted) in the application of ACA 2002 to Parental Orders. We had no idea that this was the case and have in fact previously been told that such access was there (personal correspondence with GRO for England in September 2012 when we were specifically told that anyone with a PO could apply for their original birth certificate at any age). It is therefore highly likely that this was an oversight rather than a deliberate intention and we are delighted and relieved that this has been uncovered.

There is another access matter that we would like to raise here. It is our understanding that gender identity records are sealed, which means that anyone previously born to that person or conceived with their gametes would not be able to access their post transition identity details. This appears to be a clash of rights: between the right of the donor conceived person (and the surrogate born person if LC proposals regarding the National Register are enacted) to learn of the identity of their surrogate and/or gamete donor and the general right of someone who transitions to have their identity details kept private. As with any

situation in which someone is accepted as a donor or surrogate, it will also be important that the proposed pre-conception surrogacy agreements make clear the responsibility of the surrogate (and donor where one was used) to inform the National Register of any changes to their identity, including their gender identity. This would be in keeping with BICA Guidance (2019) Guidelines for Fertility Counselling Fourth Edition. It will also be important that the National Register has the facility to record such changes.

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:
We were a little divided on this with the overwhelming majority favouring this proposal. Those in favour also believe that the annotation should specify what type of surrogacy was involved: traditional surrogacy /gestational donor surrogacy/ gestational surrogacy without donor. We are in full agreement that all short BCs (i.e. not only of those born through surrogacy) should include a statement to the effect that BCs are a record of legal parentage only and that other origins information may be held elsewhere.

We note and support the proposal elsewhere that anyone requesting their birth certificate at a later date be offered access to counselling and we propose that it should be specified that this should be FREE. We also believe that anyone wishing to make contact with others with whom they share a surrogate or donor should have access to both counselling and intermediary services (the two have important and complementary functions) and that these also should be provided free of charge.

We also think it unfortunate that the consultation document did not offer possible evidence-based explanations for their statement at 10.5 that this is 'not a pressing issue for many stakeholders' (without specifying how many surrogate-born people shared their views) and instead turned to speculative answers that we believe to be unhelpful. In particular, the document suggests that this may be because of the emphasis that most surrogacy organisations place on ongoing contact between the surrogate, IPs and the child. Apart from the fact that the child may not yet know when a donor had been used and hence whether the ongoing contact is with their genetic as well as gestational parent, there is ample evidence from studies with adults relinquished for adoption as infants and with donor-conceived adults (both of which groups are likely to have some similarities with surrogate-born adults) that could help us understand motivation to seek access to origins information (we are happy to supply references on request). These include that:
• It is not necessarily linked to unhappiness/dissatisfaction with one's raising family but can be for a range of reasons;
• It typically starts when someone is in their late 20s or 30s.

We take this up here because it links with our earlier concerns about the conceptualisation of surrogacy, the accompanying tendency to sideline the potential significance of the donor (where one was used) to the surrogate-born person and the family in which they are raised, and the limited or missing use of relevant research. Here is another example. At 10.4 the document refers to the apparent greater reluctance of IPs to disclose their use of a donor than their use of a surrogate (and there is an emerging research evidence base to support this which we can provide). In the example cited at 10.3, the reluctance was to disclose that it was the surrogate's own egg (i.e. rather than that of a donor) that had been used. There is a significant amount of evidence from research (which again we can provide) concerning donor conception that the key 'threat' to the recipient parent(s) appears to come from their use of someone else's gametes to form their family. So whether that's from the surrogate herself or a separate donor, the threat is likely to be there. Based on our practice and research evidence to date we would argue, for example, that it might potentially be helpful for some prospective parents to use a traditional surrogate rather than a gestational surrogate and donor insofar as this may more strongly encourage them to engage at that stage with the threat because they meet the traditional surrogate in person whereas an egg donor can remain more in the shadows and/or disembodied psychologically.

In the discussion in the document about human rights' aspects of access to origins information, we were very surprised not to see the BASW Position Statement on Surrogacy referenced here (https://www.basw.co.uk/resources/basw-position-statement-surrogacy-14th-december-2016), not least as it is the only one of which we are aware that covers the UK context.

We also noted an omission at 10.53 as there is another group of donor-conceived people that can access identifying information, namely those whose pre-2005 donor has re-registered as 'willing to be identified'.

Finally we found section 10.62 somewhat confusing – does it mean that if someone is surrogate-born where an egg donor was used then they will need the surrogate's details to access the register? Do all DCAs therefore have to have their mother's name, DoB, time of treatment and clinic to access it?

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:
YES it is much overdue. Too many people continue to believe that their birth certificate is a record of their genetic parentage rather than simply their legal parentage and this can be problematic, not least as the growth in commercial DNA testing is leading more and more people to learn that their origins are not what they believed them to be with attendant consequences.

We share the LCs' concerns about the apparent complexity of linking the PO Register and the Birth Register (10.43) and suspect that it is the piecemeal reform to the latter that also contributed to the apparent error in ceasing surrogate-born peoples' right to access their original birth certificate.

We would be interested for views to be canvassed as to whether the link between the PO Register and the Birth Register should also be made available to others, e.g. descendants? (we believe it is currently sealed to all but the person concerned as is adoption).

We also believe there is room for consideration of the relationship between the Birth Register and the HFEA Register. We believe that it is wrong that there is currently no requirement on the part of the GRO to inform anyone seeking a copy of their own BC that other information about them may be held elsewhere and

to which they are statutorily entitled, e.g. on the HFEA Register.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.Do consultees agree?

Yes

Please provide your views below:
YES and there is also a strong case for enabling them to do so earlier, on request (see answer at Q49). Anyone seeking out such information should also have the opportunity to access free professional support.

55 Consultation Question 47:

Yes

Please provide your views below:

Yes

Please provide your views below:
YES. We also believe that the proposed Register should hold pen portraits of surrogates and donors along the lines of current HFEA donor requirements except that the pen portraits should be required not optional (as we believe should be the case for donors outside of surrogacy arrangements; we realise the latter is outside your remit). The LCs refer to these in another place but do not include it here (and see Q48).

We assume that the Register will be open to those who have used international arrangements although this is not specified in the consultation document or in the question above.

Consideration should be given to information about the surrogate and IPs being registered even where the donor's identity (where one is used) is not known or their involvement not medically verified (this could be made clear in the entry) as this would at least enable the surrogate-born person to learn that gamete donation had been involved (and see our answer to Q63).

Where a surrogate or donor acts in any regulated arrangement (e.g. donors may be used in DC treatments outside of surrogacy) but also in an unregulated one, we believe it important that such arrangements are linked where possible through the Register. This would mean that anyone seeking information is appraised of the outcomes from all the arrangements, where known. It is important that anyone seeking information should not have to separately approach the HFEA Register and this may mean that there may need to be provision for information concerning donors to be held on each Register.

Finally we propose that consideration should be given to allowing (retrospective) registration of arrangements that pre-date the opening on the Register, subject to the necessary checks.

SEE ALSO OUR RESPONSE AT Q49.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:
YES we strongly believe that it should include non-identifying information about the surrogates as well as donors and believe the same list of required information as for donors should apply, including pen portraits. We were pleased to see acknowledgement in several places of the consultation document of the potential significance of the 'foetal environment' for the offspring, i.e. the surrogate and her bodily function and the emerging understanding of epigenetics (see for example 10.75, 10.78; footnote 76 on p292). See also for example McEwen, B. 2019, Prenatal Programming of Neuropsychiatric Disorders: An Epigenetic Perspective Across the Lifespan. Biological Psychiatry, Volume 85, Issue 2, 91 – 93; Litzky, J & Marsit, C. 2019, Epigenetically regulated imprinted gene expression associated with IVF and infertility: possible influence of prenatal stress and depression Journal of Assisted Reproduction and Genetics. 36,7, 1299–1313; Nafee et al, 2008, Epigenetic control of fetal gene expression BJOG 115:158–168; Egliston, K., McMahon, C., & Austin, M. (2007). Stress in pregnancy and infant HPA axis function: Conceptual and methodological issues relating to the use of salivary cortisol as an outcome measure.
Psychoneuroendocrinology, 32(1), 1-13 (more references can be provided on request). Added to this is the potential emotional and identity significance for offspring to know as much as possible about the woman who carried and gave birth to them, regardless of any genetic connection. We are mindful of the many years that professionals considered that they knew better than DC offspring in asserting that a donor carried little or no potential significance for them. See, for example, Frith, L., Blyth, E, Crawshaw, M. and van den Akker, O. (2017) Searching for 'relations' using a DNA linking register: Constructions of identity, relatedness and kinship by adults conceived following sperm donation. BioSocieties. 13 (1), 170–189. doi:10.1057/s41292-017-0063-2; van den Akker O.B.A. Crawshaw, M.C, Blyth, E.D and Frith, L.J (2015) Expectations and experiences of gamete donors and donor-conceived adults searching for genetic relatives using DNA linking through a voluntary register. Human Reproduction, 30 (1): 111-121 (more references can be supplied on request).

We welcome your strong support throughout the document of the right of surrogate-born people to information about the surrogate and donor (where one was used) so that they can determine its significance for themselves. We believe this should apply to both identifying and non-identifying information.

We are less sure of the need to include non-identifying information about the IPs except in circumstances that you describe in relation to Q53.

SEE ALSO OUR RESPONSE AT Q7 AND Q49.

57 Consultation Question 49:

Yes

Please provide your views below:
YES but there is a strong case for enabling them to do so earlier, on request (see below)
Access to this information should also be provided to recipient parents up to the child reaching 18 in line with current practice for parents of DC offspring outside of surrogacy arrangements who access the HFEA Register. Surrogates and donors should also have access to information about their offspring in line with that which currently exists for donors outside of surrogacy arrangements who access the HFEA Register. We are concerned at the extent to which donors and their offspring are not covered in these questions even though you acknowledge that significant numbers of surrogacy arrangements involve donors.

Finally we believe the time has come to also enable the parties concerned to voluntarily agree to their identifying information being released before the time at which it must by law be released on request. Such state-funded voluntary registers operate in other parts of the world such as Victoria, New South Wales and Western Australia. Not only could this reflect the growing understanding that facilitated information exchange and contact can be beneficial at a much earlier stage than is currently possible but also the fact that commercial DNA testing is leading to growing numbers of parties being unwittingly identified to each other and/or learning of their own origins or of the involvement of close family members in donor conception for the first time. This includes those below 18. Indeed we are increasingly discussing the possibility that the time will come when donors and surrogates will need to be identifiable from conception onwards.

All professional support should be free and should include intermediary services not only implications counselling, in line with what is offered those approaching the HFEA Register.

Please provide your views below:
YES definitely – however we believe the wording at (2) is too woolly. Counsellors in general are not necessarily equipped to assess maturity whereas other professionals may sometimes be better placed to do so. We suggest that this section of the proposal requires more attention. We are aware, for example, that judgements of maturity in some settings (say in relation to medical interventions) are only made after consultation with colleagues.

All professional support, including intermediary services, should be free.

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:
YES; and the same should apply to requests as to whether the same donor was used either inside or outside of surrogacy arrangements. Indeed there may also need to be provision for releasing such information where the same IP (if they were a genetic parent) was involved. If there is agreement to allow access rights to offspring of the surrogate or donor, then these should also be included here. We are concerned at the extent to which donors and their offspring are not covered in these questions even though you acknowledge that significant numbers of surrogacy arrangements involve donors.

As we said earlier, it is important that anyone seeking this information does not has to separately approach the HFEA Register so there needs to be a mechanism for linking the two.

59 Consultation Question 51:

Yes

Please provide your views below:
YES – and the same should be the case for those sharing a donor inside or outside of surrogacy arrangements. We suggest that this facility should be open to the children of surrogates and also to the children of donors whether surrogacy was involved or DC alone. If enacted, such rights should extend to the HFEA Register, although we are aware that this is outside the LCs' remit.

We are concerned at the extent to which donors and their offspring are not covered in these questions even though you acknowledge that significant numbers of surrogacy arrangements involve donors.

All professional support should be free and should include intermediary services not only implications counselling, in line with what is offered those approaching the HFEA Register.

Please provide your views below:
YES; this may be well be of significance to the parties for the reasons you set out. See also our reply to Q48

60 Consultation Question 52:

Please provide your views below:
YES to both (1) and (2), and this should also apply for those sharing a donor whether inside or outside of surrogacy arrangements and hence the children of donors whether surrogacy was involved or DC alone. If enacted, such rights should extend to the HFEA Register, although we are aware that this is outside the LCs' remit.

We are concerned at the extent to which donors and their offspring are not covered in these questions even though you acknowledge that significant numbers of surrogacy arrangements involve donors.

Please provide your views below:
YES to both (1) and (2), and this should also apply for those sharing a donor whether inside or outside of surrogacy arrangements and hence the children of donors whether surrogacy was involved or DC alone. If enacted, such rights should extend to the HFEA Register, although we are aware that this is outside the LCs' remit.

We are concerned at the extent to which donors and their offspring are not covered in these questions even though you acknowledge that significant numbers of surrogacy arrangements involve donors.

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:
We are inclined to support this. If we have understood correctly, such details will have been included on the surrogacy agreement anyway. We liked the suggestion at 10.126 that the 'absent' IP should be recorded but suggest an amendment. We propose that an absent IP should in these circumstances be contacted by the National Register and invited to provide additional information (should the decision be made at Q48 to include additional info about IPs).

This potential situation reinforces our comments about whether there will be provision to update the surrogacy agreement and if so how. It also reinforces our concerns that any couples in the new pathway who are not linked to a surrogacy agency will potentially be managing the challenges associated with separation either during pregnancy or post birth without outside support from the licensed clinic and probably not from the person that gave them legal advice.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:
This has some merit but raises concerns about some IPs delaying submitting an application, as suggested in the consultation document. We had mixed views about it with a larger number favouring its retention. If it were to remain then we would support it being amended to allow potential applicants the right to later request 'leave to apply' and there may need to be guidance as to the range of circumstances in which this could be granted. This would therefore still encourage early applications.

63 Consultation Question 55:

Yes

Please provide your views below:
YES, we are very inclined to support the extension of the right of courts to dispense with the surrogate's consent as set out at (2) above but suggest this decision should be made only with the involvement of a Children's Guardian/POR. As we assume such cases will only occur outside the new pathway, the latter will anyway be involved.

We also wonder whether it should say 'primary residence' rather than 'living with'?

However we do not support the consultation document's assertion that it is [always] detrimental to children when their parenting is split between those whom it identifies as being legal, social, psychological and genetic parents. Although it may be preferable in many cases for there to be full alignment, we are not aware of the evidence from which this statement was drawn beyond the wishes of 'stakeholders', no matter how understandable those may be. As we say elsewhere in our response, the (limited) research into the developmental attributes of surrogate-born children does not support this assertion. Instead we suggest that research into the well-being of children is complex and suggests that it is affected by many variables of which the legal, social, psychological and genetic status of their parents are only some.

Here and elsewhere in the document it would have been helpful to know which stakeholders are referred to.

Yes

Please provide your views below:
As above:
YES, we are very inclined to support the extension of the right of courts to dispense with the surrogate's consent as set out at (2) above but suggest this decision should be made only with the involvement of a Children's Guardian/POR. As we assume such cases will only occur outside the new pathway, the latter will anyway be involved.
We also wonder whether it should say 'primary residence' rather than 'living with'?
However we do not support the consultation document's assertion that it is [always] detrimental to children when their parenting is split between those whom it identifies as being legal, social, psychological and genetic parents. Although it may be preferable in many cases for there to be full alignment, we are not aware of the evidence from which this statement was drawn beyond the wishes of 'stakeholders', no matter how understandable those may be. As we say elsewhere in our response, the (limited) research into the developmental attributes of surrogate-born children does not support this assertion. Instead we suggest that research into the well-being of children is complex and suggests that it is affected by many variables of which the legal, social, psychological and genetic status of their parents are only some.
Here and elsewhere in the document it would have been helpful to know which stakeholders are referred to.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Yes

Please provide your views below:
YES. And we strongly support the Law Commissions' desire to seek to ensure that surrogacy tourism is not promoted.

Please provide your views below:
We believe that a qualifying period of habitual residence will be beneficial in seeking to strongly reduce surrogacy tourism

65 Consultation Question 57:

Please provide your views below:

We consider it important that the law continues to say who can become a legal parent. We agree that it is inappropriate for couples to have to discuss the intimacies of their relationship and don't see the need for this. We accept that it is more difficult to establish what is an 'enduring family relationship' than it is to 'prove' marriage or civil partnership. But the inclusion of such wording signifies the importance to the child of this being a permanent commitment.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Yes

Please provide views below:

67 Consultation Question 59:

Other

Please provide views below:
Disappointingly, the document does not provide any evidence to back its assertion that a genetic link between at least one parent and offspring is not necessary for successful parenting through surrogacy. At one level it could be argued that because the UK permits double donation and embryo donation then it would be logical to extend this to surrogacy arrangements. Just because something is possible does not mean it should happen and the evidence from the outcomes of double donation or embryo donation is anyway severely lacking so cannot be used to support the removal of this requirement.

Drawing on the fact that the use of double or embryo donation already exist as routes to family life also assumes that there is no substantive difference between double or embryo donation and surrogacy where there is no genetic link, even though surrogacy involves another woman carrying the baby and giving birth. As we set out earlier, we believe that there are important differences between surrogacy and donor conception. Removing a requirement for a genetic link would in turn move surrogacy in this form further along the continuum towards adoption.

There is some evidence that there can be tensions in the relationship with the non-genetic parent in DC families where 'single' donation is used, where the evidence base is greater though still not extensive (see for example Frith, L., Blyth, E., Crawshaw, M. and van den Akker, O. (2017) Secrets and disclosure in donor conception Sociology of Health and Illness DOI:10.1111/1467-9566.12633; Frith L, Sawyer N and Kramer W. 2007 Forming a family with sperm donation: a survey of 244 non-biological parents. Reproductive Biomedicine & Society Online 709-718).

Looked at from another angle - the lifespan lens of surrogate-born children - removing the genetic link means they would have two genetic parents (donors), a surrogate and two raising parents. There is now a fair amount of evidence to say that negotiating the unfolding meaning and significance of 'parents' other than those by whom one is raised can be complex and demanding for both offspring and raising parents (see for example Crawshaw, M. and Daniels, K. 2018 Revisiting the use of 'counselling' as a means of preparing prospective parents to meet the emerging psychosocial needs of families that have used gamete donation Families, Relationships and Societies https://doi.org/10.1332/204674318X15313158773308; Frith, L., Blyth, E., Crawshaw, M. and van den Akker, O. 2017 Searching for 'relations' using a DNA linking register by adults conceived following sperm donation BioSocieties 13, 170-189; Indekeu, A. 2014 When 'sperm' becomes 'donor': Transitions in parents' views of the sperm donor Human Fertility 17(4):1-9 ; Isakksson S., Sydsjo G., Svanberg, A.S. and Lampic, C. 2019 Managing absence and presence of child-parent resemblance: a challenge for Heterosexual couples following egg donation Reproductive Biomedicine and Society Online DOI https://doi.org/10.1016/j.rbms.2019.07.001). The document does not refer to embryo donation but that would become a possibility too should the genetic link be removed and carries additional factors to be considered insofar as the genetic parents were in a relationship and that there may be full siblings.

In other words, as we have argued elsewhere, the implications of being donor-conceived are not simply assuaged by having access to information about them. Put together – and given that it rests with speculation as to what additional risks might flow from removing a requirement for a genetic link in surrogacy families – we are on balance inclined not to support its removal.

We also note, and agree with, the concern that is reported from the Department for Education that moves to bring even more people into the use of surrogacy arrangements has the potential to reduce further those considering adoption, perhaps particularly of those children in middle childhood and older.

Please provide views below:
See answer above. Given that the safeguards are significantly less in the PO pathway our views are strongly the same.

Also we were interested in the statement at 12.62(3) that child trafficking could only happen in international surrogacy; we do not agree.

Yes

Please provide views below:
YES but for the reasons we set out above rather than solely on the grounds that international surrogacy poses more risks in determining intentions, in exploitation, commodification and trafficking etc .

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Yes

Please provide your views below:
YES, it would indeed be harsh to do otherwise for someone in this situation

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:
YES, it would indeed be harsh to do otherwise for someone in this situation

70 Consultation Question 62:

Please provide your views below:
YES there should, not least to avoid instances of social surrogacy

Please provide your views below:
We support in broad terms the description at 12.93

71 Consultation Question 63:

Yes

Please provide your views below:
YES and that the donor (where one was used) should be clearly identified as such. We are unsure from the document whether the HFEA Register would also continue, as now, to record some of this information. As we have said in our earlier responses, it is important that anyone seeking information does not have to separately approach each Register in our view.

Please provide your views below:
YES to both – and we note that this is a change to current practice when it is not routinely required, regardless of the context. RE (2) this needs careful thought as to timing and risk where DNA testing is concerned. We are not sure if it would be appropriate for this to be done during pregnancy, not least as we do not know what risk it may pose to the foetus. Presumably DNA testing would have to be carried out by a Government certified laboratory.

Yes

Please provide your views below:
YES and that of the donor if one was used. The document does not say what should happen if the surrogate's identity cannot be established, as we understand has happened on occasion in the past.

Where the identity of the donor is unknown or cannot be medically verified, this should be recorded as such. While we would much prefer that there are no situations in which a surrogate-born child is conceived with anonymous donation, we doubt that this practice would stop even if the UK refused to grant POs in such circumstances.

72 Consultation Question 64:

No

Please provide your views below:
NO, there should be an age limit; we cannot see that any case brought under the Equality Act would be likely to be successful. We suggest that the upper age limit should be one that reflects the likelihood that at least one of the IPs could reasonably be expected to raise the child through to adulthood while still in good health. We were not convinced by the suggestion at 12.127 that the decision should be left to the 'welfare assessment' (by which we assume you meant the 'welfare of the child' assessment). We suspect that many clinics and surrogacy agencies would welcome the setting of a limit to absolve them of this particular decision.

We were interested to note that you used neither adoption nor assisted conception as potential indicators for age limits here. The latter is arguably easier to determine on physiological grounds of course. Although there are situations in adoption where older adoptive parents are approved or couples with a big age difference, there is considerably more scrutiny of their circumstances (and consideration of the needs of the children for whom they may actually or potentially be being considered), their extended family and other support networks and more time is spent in preparation than is the case with surrogacy. Older adoptive parents are also never approved for adoption of infants.

Please provide your views below:
YES there should be a maximum age limit – see the answer above

Other

Please provide your views below:
We believe that the lower age limit should be higher than 18. In practice we agree that it is highly unlikely that anyone as young as 18 would consider using surrogacy to form their family and of course people of this age can become parents through natural conception. However we wonder if setting a minimum age limit of, say, 23 or 25 (as is the case in some other countries) would reinforce the message that this is not the same as natural conception and requires additional thought, planning and safeguards.

We were interested to note that you neither used adoption nor assisted conception as potential indicators here.

73 Consultation Question 65:

Other

Please provide your views below:
As with our response to Q64, we believe that the lower age limit should be higher than 18. In practice we agree that it is highly unlikely that anyone as young as 18 would become a surrogate. However we wonder if setting a minimum age limit of 25 (as is the case in some other countries) would reinforce the message that this is not the same as natural conception and requires additional thought, planning and safeguards.

Other

Please provide your views below:
As with our responses to Q64 and 65, we believe that the lower age limit should be higher than 18. In practice we agree that it is unlikely that anyone as young as 18 would become a surrogate but we understand that there have been situations involving very young women acting as surrogates for family members. We believe that setting a minimum age limit of 25 (as is the case in some other countries) would reinforce the message that this is not the same as natural conception, requires additional thought, planning and safeguards and lowers the risk of pressure on very young women.

Although you yourselves decided not to propose an upper age limit for surrogates (p300), we believe that there should be one where gestational surrogacy is concerned. By not setting an upper age limit, we believe that there are very real risks to all the parties, including the welfare of the surrogate-born child and we have concerns that this would not always be picked up in clinic's 'welfare of the child' assessments unless they are considerably strengthened.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Please provide your views below:
We considered this beyond our competence to answer.

75 Consultation Question 67:

Yes

Please provide your views below:
SEE ALSO OUR RESPONSES TO QS 14 AND 22

YES but it may be appropriate to also include other members of the relevant families and networks rather than this being restricted to the list included here. We also believe that such sessions are not sufficient by themselves for the reasons that we set out earlier about the need for there to also be involvement by professionals whose core focus in the child and who are trained and experienced in such matters.

We feel strongly that the LCs have misunderstood some key aspects of implications counselling (the consultation document also mistakenly quotes BICA Guidance whereas the reference cited is not BICA guidance). The subject as to whether or not implications counselling should include an element of suitability assessment is hotly debated within counselling circles around the world, including here in the UK. While some counsellors are prepared, for example, to undertake Welfare of the Child assessments, others are not. BICA'S Guidelines for Fertility Counselling Fourth Edition 2019 make clear that counselling and WoC assessments should always be conducted separately with an alternative counsellor made available to the parties concerned where necessary but we are not sure that this reliably happens. Counsellors' primary clients are the adults that they are seeing and their code of ethics requires that they should only breach confidentiality if they consider the person is a danger to themselves or others. This is a high threshold and leaves some counsellors who may have misgivings about the person's suitability to enter surrogacy arrangements but not with sufficient evidence to halt them proceeding. In various places, the document refers to implications counselling as being part of 'screening procedures' and our comments here make it clear that they are not guaranteed to be. Instead counselling aims to provide a safe and confidential space where people can explore their issues, and to help ensure that they understand the surrogacy process and have reflected on the issues they may face. These sessions are therefore not intended to actively assess risk.

The consultation document also says that information is provided as part of implications counselling. This is not the case: the Code of Practice makes clear that information should be provided separately to counselling, leaving the counsellors free to focus on the implications of the information received and clarify/help their

clients seek clarification where necessary.

In keeping with these comments, we have argued earlier and elsewhere that the parties involved should be required to take part in preparation sessions, especially the IPs. These could be adapted from adoption preparation sessions and the model for Preparation for Parenthood workshops run by DC Network. They would have the advantage of removing the fear of assessment of suitability to parent (regardless of what IPs will be told, they will believe counselling to be a gate-keeping hurdle as evidenced in research) at the same time as acknowledging that there is a need for help with ‘readiness to parent’ as parenting a surrogate-born child will involve additional parenting tasks to parenting either a natural born or DC child. For example we are alarmed that at 13.9 the document only talks about IPs’ readiness to support a child to have a positive relationship with a surrogate but does not mention the donor (where one was used). We note that some surrogacy agencies use the language of preparation already, no doubt born out of their bottom-up experience and their values. We believe the omission of this from your proposals is of great concern.

We welcome the proposal to not require psychological screening of any of the parties but on grounds not mentioned in the document, i.e. that we know of no robust evidence to say that it is effective. Also we suspect that IPs believe that a key aim of such screening is to exclude women who would be less likely to relinquish the baby at the end so anything that disavows them of that false reassurance is warranted.

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Other

Please provide your views below:
We had mixed views here, with the majority agreeing that this should be a requirement, paid for by IPs. The reservation was because of the additional costs that would be incurred, given that many successful PO applications are made currently without legal advice and representation. However we acknowledge that drawing up a pre-conception surrogacy agreement for those entering the proposed new pathway would carry different implications to making a post birth PO application alone. We are pleased that you acknowledge that counsellors are not competent to provide legal advice (13.56) but have some remaining concerns that the responsibility for ensuring that the parties have understood the legal implications of their actions remains with the regulated body/ies and are unsure what this means in terms of liabilities.

We strongly feel that there is a need for an accreditation scheme for lawyers who wish to provide this service, one that is proportionate to the task. Several of us are aware of instances where IPs have been provided with factually incorrect legal advice and we are not convinced that standards can be regulated adequately through existing mechanisms. We also wonder if there should be a set fee for this work to try and ensure that it remains within the means of as wide a number of parties as possible.

We are aware of some countries where lawyers have taken on a primary role in surrogacy arrangements more generally and would want there to be steps to avoid that happening here.

77 Consultation Question 69:

Yes

Please provide your views below:

Please provide your views below:
YES, this acknowledges the similarities between adoption and surrogacy as alternative routes to family life that require additional safeguards.

78 Consultation Question 70: We invite consultees’ views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:
We consider it important that a surrogate has previously given birth, as pregnancy is experienced as a major life event with expected and potentially unanticipated physical and psychological consequences. We have stated elsewhere how complex a decision it is to become a surrogate per se and we believe this is made even more complex when the woman has no prior experience of the psychological and physical effects of conception, pregnancy, delivery, and the post natal period. Both antenatally and postnatally, moderate to severe conditions are not uncommon and a previously pregnant surrogate may interpret these differently from one who has not previously experienced a pregnancy. Requiring a surrogate to have previously given birth may also act as a deterrent to younger women in particular coming forward to act as surrogates for financial gain.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.Do consultees agree?

No

Please provide your views below:
NO, we believe that there should be a maximum, partly on the grounds of the surrogate’s physical and mental health or to minimise the risks that accompany surrogates relying on surrogacy for a steady income but also on the grounds of keeping low the number of other surrogate-born individuals, offspring of surrogates, offspring of donors and all their associated families and networks that the surrogate-born person will have to ‘accommodate’ practically and emotionally during their lifetime. It’s a surprise that the Commissions did not include this latter aspect in their thinking on this matter. PROGAR has previously expressed the view that the current limit for DC families from one donor is too high at 10. As the implications of commercial DNA testing become clearer and reports of burn out grow among the affected parties when faced with ever growing numbers, we reiterate that view.

Further, we suggest that there should be guidance that requires clinic and surrogacy organisations to take account of the surrogate's physical and emotional health – including through use of the available research evidence - and act in her best interests.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, but without the need for production of receipts; or

Please provide your views below:
Practice has shown that it has become increasingly unrealistic to expect receipts to be produced so we favour (2). We are of the view that the aim should remain for surrogacy to be driven primarily by altruism and thus that there is no place for the exchange of fees/payment for 'work done' where children are concerned. This is regardless of the fact that this means that surrogates (and donors) do not gain financially (which is largely true) whereas the brokers/ clinics/other professionals do. We prefer that attention is paid to tackling the financial gains of others rather than introducing 'work' payments to surrogates and donors. PROGAR participated in the HFEA consultation some years ago about whether to pay gamete donors and were pleased that the HFEA came out firmly against this. We believe that the national approach to surrogacy should be in line with that and with the rules on adoption.

In addition to the evidence cited in the consultation document, a study with Parental Order Reporters found clear evidence that some surrogates saw their involvement as being about financial gain (Crawshaw M, Purewal S, and van den Akker O 2013 'Working at the margins: The views and experiences of court social workers on Parental Orders' work in surrogacy arrangements' British Journal of Social Work 43, 6, 1225-1243). We would prefer for this to be curtailed here in the UK. Given the discrepancy in general between the socio-economic situation of surrogates and IPs in both domestic and international arrangements – something which is acknowledged in the consultation document but downplayed in terms of it being seen to carry significance - we believe financial inducement needs to be more reliably considered as a cause for concern for surrogates and surrogate-born offspring (see Fronek, P. (2018) Current perspectives on the ethics of selling international surrogacy support services Medicolegal and Bioethics 8:11020; Cheney, K. (2018) International commercial surrogacy – Beyond feminist conundrums and the child as product IN R. Rosen and C. Twawley (eds) Feminism and the Politics of Childhood: Friends or Foes London, UCL Press; Rotabi, K.S., Mapp, S., Cheney, K., Fong, R. and McRoy, R. (2017) Regulating commercial surrogacy: the best interests of the child Journal of Human Rights and Social Work 2:64-73).

We were surprised not to see the inclusion as a potential reason against fee payments (and commercial surrogacy) the impact that this may have on some surrogate-born offspring on learning that their surrogate had been paid. While we are not aware of any specific research on this subject, the majority of the donor-conceived people with whom we have had contact over the years are opposed to fee payments. Also, we note from recent correspondence with a colleague in Canada that they are shortly to tighten up on what are allowable expenses, not least as they have become an increasingly popular 'surrogacy tourism' destination. Given the LCs' clearly stated desire for the UK not to become the same (a view that we support), we believe it important to recommend (2), with room for attention to the surrogate's welfare in terms of what counts as costs, e.g. a recuperative family holiday.

81 Consultation Question 73:

Please provide your views below:
YES, we believe such payments should be allowable but are not in a position to comment on (2).

82 Consultation Question 74:

Please provide your views below:
YES and see our answer to Q72. We are not in a position to comment on (2).

83 Consultation Question 75:

Please provide your views below:
YES and see our answer to Q72. We are not in a position to comment on (2).

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:
If the surrogate is not statutorily entitled to any loss of earnings in full, then we consider that this could be an element of the costs.

85 Consultation Question 77:

Please provide your views below:
We agree with the proposal to include potential earnings as defined at 15.35 but find it more difficult to support the inclusion of those types of potential earnings that are described at 15.36 for the reasons set out in that para.. Given that surrogates are often in low paid work, it is important that their involvement in surrogacy does not adversely affect their own or their family's income levels.

Where a surrogate is intending to become a surrogate as an alternative to being in paid work, then we are less inclined to support the inclusion of loss of potential earnings as this becomes much closer to paying a wage. However as with all complex considerations, there may be situations where this could be justified but would need careful exploration at the pre-conception agreement stage.

We understand that it is common practice currently to accept loss of earnings as set out in para 15.35 as a reasonable expense but it should be standard practice for this to be properly examined, perhaps with guidance issued as to what this would entail. This would go some way to avoid it being used as a backdoor way of making payments, including by making payments at a higher hourly rate than the actual rate at which the surrogate would be paid in her employment.

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:
We have mixed views about the idea of compensation payments. They have been in place for UK donors for some time now (specifically for each donation) and we suspect that for some donors at least they provide a financial inducement to donate (though there is no research evidence on the extent to which compensation payments act as an inducement). A payment amount that would not amount to financial inducement for some, most certainly would for others. Their levels are anyway very difficult to determine, especially without research for guidance. That said, if a woman suffers complications such as those specified in (3) then we are inclined to think there should be active consideration of what expenses would enable her to manage the immediate and later effects and these could come under 'reasonable expenses'.

Please provide your views below:
See above

Not Answered

Please provide your views below:
See above, though our inclination if the decision were to be made to introduce a compensation payment is to opt for (1) as leaving it to the parties to negotiate runs greater danger of it shifting to fee payment levels.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:
The surrogate should have adequate life insurance in place as part of the surrogacy agreement, paid for by the IPs. We do not believe that IPs should then be allowed to pay compensation to the surrogate's family on top of this.

89 Consultation Question 81:

Please provide your views below:
YES but only if there is some definition of 'modest'. Otherwise this runs the danger of becoming another method of payment. We are aware, for example, of IPs giving a cash lump sum for the surrogate allegedly to book an expensive holiday for herself and her family; this is not a modest gift.

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:
NO in keeping with our answers to the previous questions

Not Answered

Please provide your views below:
NO, we do not believe that such payments should be made

Please provide any views below:
NO, we do not believe that a fixed fee should be paid.

91 Consultation Question 83:

Please provide views below:
In keeping with our answers to the responses we have given above, we are not in favour of payments/fees.

Not Answered

Please provide your views below:
In keeping with our answers to the responses we have given above, we are not in favour of payments/fees.

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Other

Please provide your views below:
In keeping with our answers to the responses we have given above, we are not in favour of payments/fees. If such a system were to be introduced, we can see no reason to differentiate between the different approaches.

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:
Whilst we understand the view that surrogate-born children should not carry the taint of criminality and that therefore neither the surrogate nor the IPs should be subject to criminal action, we are also conflicted about what sanctions might be sufficient to deter any intentional wrongdoing. In keeping with the UN Special Rapporteur on Child Selling and Exploitation we have grave concerns about the role of brokers (including where applicable clinic owners and associated professionals and practitioners) in surrogacy agreements and believe sanctions should primarily be directed at them rather than surrogates or IPs.

96 Consultation Question 88:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:
Our colleagues in CFaB support our responses as set out in our response. In particular they support the need to strengthen the screening and preparation of IPs to protect the interests of the child as well as the surrogate and the need to see surrogacy as closer to adoption than to assisted conception. They share our concerns about the lack of scrutiny of any IPs who have been turned down for adoption, for example. They also support the view that it is important that ties are maintained with the surrogate (and donor where one was used), not only for understanding origins but also in the case that there are siblings or there is a need to access medical history.

Our colleagues also suggest that consideration may need to be given to different forms of marriage, including purely religious ceremonies, and whether/how these may affect surrogacy recognition.

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.Do consultees agree?

Yes

Please provide your views below:

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Yes

Please provide your views below:

Yes

Please provide your views below:
Yes probably

Yes

Please provide your views below:

Yes

Please provide your views below:

Please provide your views below:
Our majority view is to support the retention of the six months rule with leave to apply outside that time in specified circumstances (see our earlier response). We agreed that whatever is finally accepted, the visa rules should reflect that.

We also think it important that in any circumstances in which IPs state that they intend to apply for a PO as a condition of being granted key rights (such as a visa) then it is crucial that a statutory duty is imposed for a relevant agency to track whether an application is later made and, if not, to investigate. This gap was identified in earlier research (Crawshaw M., Blyth E. and van den Akker O. 2012 'The changing profile of surrogacy in the UK – Implications for national and international policy and practice' Journal of Social Welfare and Family Law vol 34:3 265-275) and needs attention. There are no data available to determine how many IPs fail to go on to apply for a PO but there are likely to be some. This is especially problematic if the parents subsequently separate and one parent (often the mother) finds herself without legal standing in relation to the child. It is in the child's best interests that their legal relationship to each of the IPs is secured.

103 Consultation Question 95:We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.Do consultees agree?

Yes

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:
YES this is long overdue. Drafts will need to be consulted on widely and PROGAR is firmly of the view that it should include statements about the importance of openness with offspring from the start about their full origins - be that with the surrogate-born child, the children of surrogates, the existing children of IPs and any other children affected - and the implications of the rise in commercial DNA testing. We lobbied (unsuccessfully) for this to be included in the recent DHSC's documents and considered it to be a missed opportunity for making a strong statement to surrogates, IPs and professionals alike about this important principle that is laid down in UK law.

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.Do consultees agree?

Yes

Please provide your views below:

107 Consultation Question 99:

Other

Please provide your views below:
We note that this is referred to in more than one place in the document. At present, we feel uneasy at supporting such a big step when the arrangements take place beyond our shores.

We consider it vital that relevant requirements would need to include the lack of commercial arrangements, statutory rights for the surrogate-born person to

access information about the identity of the surrogate and donor(s) (and those of whichever other parties are granted access rights to the National Register), the presence of an independent regulator in the state or country and so on. In addition, we suggest that it will be more complex (in our view) to provide the necessary professional support when releasing the relevant information later and helping with contact (where desired) where overseas arrangements have been involved. Such support may be better provided in the UK, i.e. closer to where the IPs and surrogate-born persons are living. There are also risks associated with any later legislative or other regulatory changes in overseas jurisdictions that might restrict the rights of surrogate-born people or information access rights for other parties such as surrogates, donors, IPs and other offspring. This would need regular review.

108 Consultation Question 100:

Please provide your views below:
PROGAR does not have such experience to draw on.

Please provide your views below:
We believe that (1) will be helpful in deterring surrogacy tourism to the UK but have no comment on (2)

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:
This is beyond the competence or experience of PROGAR to answer

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:
This is beyond the competence or experience of PROGAR to answer

111 Consultation Question 103:

Please provide your views below:
This is beyond the competence or experience of PROGAR to answer

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:
This is beyond the competence or experience of PROGAR to answer

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provude your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:
This is beyond the competence or experience of PROGAR to answer

115 Consultation Question 107:

Please provide your views below:
When we were asked to comment on the draft DHSC Guidance, we strongly urged the inclusion of the role that health professionals can play in supporting and reinforcing the importance of openness with offspring from the start, be that with the surrogate-born child, the children of surrogates, the existing children of IPs and any other children affected. This was not included and we consider this to be a missed opportunity. Such support can prove invaluable to parents, can prompt discussion (including about any ambivalences or distress about the use of surrogacy and/or donors) and can enable professionals to point parents towards help, peer support and resources. We also believe it is important to include reference to the implications of the rise in commercial DNA testing.

It is also clearly important that IPs are centrally involved (often in the early stages alongside the surrogate) in any situations where the surrogate-born child is in need of medical care and/or hospitalisation. DHSC Guidance sets out good practice and we hope that this is being monitored.

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:
PROGAR is not aware of any research save the two studies conducted by Surrogacy UK in 2015 and 2018 of this aspect of surrogacy and which only included very small numbers of surrogates (111 in first report) and IPs (206 in first report) relative to the number of POs granted between 1995 and 2012 (1145). These findings suggested that surrogates and IPs on the whole found it difficult to manage but without indications of adverse effects on the relationship between IPs and their surrogate-born children. The limited research conducted by the Cambridge Centre for Family Research reported no significant adverse effects. It concluded that at age 7 'The absence of a gestational connection to the mother may be more problematic for children than the absence of a genetic link' but made no comment on the effect of legal parenthood or the severance of the link between the surrogate and the child (Golombok et al, (2013) Children born through reproductive donation: a longitudinal study of psychological adjustment. Journal of Child Psychology and Psychiatry 54 (6), 653-660) but this effect seemed to have lessened in later reports. As said earlier, this research is of a small, selected sample who had used UK arrangements only, with new members being recruited to replace those who dropped out (so not longitudinal research in the traditional definition) and not yet gathering the views of surrogate-born offspring themselves. In research terms it would anyway be almost impossible to consider the effect of one such variable so caution must be placed on any findings.

Of course in the adoption of relinquished infants (i.e. the closest form of adoption family formation to surrogacy) the intended adoptive parents are typically coping without being the legal parents for much longer than most IPs in surrogacy arrangements.

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:
PROGAR has nothing to add to its earlier responses

Please provide your views below:
PROGAR has nothing to add to its earlier responses

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:
PROGAR does not have the competence or experience to answer this but considers it important that there is parity across the UK. As with our response regarding Scotland, we strongly believe the involvement of social work professionals is important.

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below: