

Guidelines for Surrogate Pregnancy

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1. Aim

- 1.1 This guideline has been developed to assist professionals in the care of families involved in the surrogacy arrangements. Midwives are involved in surrogacy because they are called upon to support and care for both the surrogate mother and the commissioning family.

Surrogate: The woman who carries the pregnancy

Commissioning: Those whose wish to bring the child up after birth

The incidence of surrogate pregnancy continues to be infrequent therefore clear guidance is required.

2. Definition

- 2.1 The Surrogacy Arrangement Act 1985 defines a surrogate mother as:
“A woman who carries a child in pursuance of an arrangement:

- a) Made before she began to carry the child and
- b) Made with a view to any child carried in pursuance of it being handed over to, and the parental rights being exercised (so far as is practicable) by another person or persons”

- 2.2 Surrogacy is the practice whereby one woman carries the child for another person with the intention that the child should be handed over after birth (RCM 1997).

3. Legal Aspects

- 3.1 Surrogacy in the UK is controlled by the Surrogacy Agreement Act (1985) and the Human Fertilisation and Embryology Act (1990).
- 3.2 These Acts permit such arrangements under tightly controlled circumstances that prohibit commercial agencies organising surrogacy for profit.
- 3.3 The Surrogacy Act 1985 states that no surrogacy arrangement is enforceable by law.

Legal conditions for parental orders

- The intended parents can be married, unmarried or in a civil partnership.
- The child has been carried by a woman other than the intended mother and must be genetically related to at least one of the intended parents
- The surrogate and her husband/Civil Partner (if she has one) must freely and unconditionally consent to the making of the Order. Consent is not valid unless it is given 6 weeks after the child is born.
- Couples must apply for the Parental Order before the child reaches six months of age.

- No money, other than reasonable expenses, must have been paid in relation to the surrogacy arrangement, unless agreed by the court. □
- At the time of the application and at the time of the Order the intended parents must be domiciled in the United Kingdom and the child must be living with the intended parents.
- The surrogate mother and Intended parents (IP) must be over 18

The Court will appoint a Parental Order Reporter, who visits all the parties and provides the Court with a report describing the circumstances of the surrogacy, commenting on the welfare of the child, (as set out in the Adoption Act 2002 and modified by the Parental Orders Regulations), and any arrangements for direct or indirect future contact.

Although rare, in some instances the Court may ask for a DNA test to prove the parentage of the child.

The Parental Order Reporter will need to satisfy the Court that the consent of the birth mother is freely given. The granting of the Order is dependent on the surrogate's consent.

When the Parental Order is granted the Registrar General will make an entry in a separate Parental Order Register to re-register the child. This will be cross-referenced with the original entry in the Register of Births. It will not be possible for the public to make a link between entries in the Register of Births and the Parental Order Register.

However once the child (who was the subject of the Parental Order) is 18 years old they are able to have a copy of the original birth certificate, but they must first be offered counselling.

Under British Law the intended parents will receive a new birth certificate stating they are the legal mother and father of the child.

Up until the granting of the Parental Order by the Court, the surrogate can apply for a Residence Order to stop the Parental Order being made or seek the return of child. The intended parents can make a counter application.

Birth Registration

The surrogate registers the child's birth in the Register of Births and is named as the legal mother on the Birth Certificate. See 'significant points' above for further details.

Parental Orders

In order for the intended parents to become the legal parents of the child they have to apply for a Parental Order, which is provided for in Section 30 of the Human Fertilisation & Embryology Act.

Application forms for Parental Orders are available from the Family Proceedings Court / Magistrate's Court or County Court in the intended parents' local area.

If the intended parents comply with the conditions of the Human Fertilisation and Embryology Act, set out below, the Court will appoint a Parental Order Reporter.

4. Establishing the parents

4.1 The Human Fertilisation and Embryology Act 1990, Section 27, states that the legal mother is always the surrogate mother regardless of genetic makeup and she is legally responsible for the child until such time as the intended parents adopt or seek a parental order.

4.2 The legal father depends upon other factors:

- If the surrogate mother is married then her husband is the legal father.
- If the surrogate mother has a partner then he is the legal father, unless he can prove that he did not consent to the treatment.
- If the surrogate mother is single and the treatment did not take place at a centre licensed by the HFEA, then the legal father is the intended father.
- If the surrogate mother is single and the treatment took place in a licensed clinic the child is legally fatherless.

5. Safeguarding Aspects

5.1 Local Authorities are required to make enquiries when they are aware that a surrogacy arrangement exists so as to be satisfied that the baby is not, or will not be, at risk as a result of the arrangement.

5.2 If the surrogacy has been organised through a licensed clinic, assessment of the family in relation to safeguarding will have been undertaken prior to commencement of treatment.

5.3 Staff booking women who disclose a surrogate pregnancy will be required to establish how the arrangements/treatment was performed and if the clinic was licensed.

5.4 In circumstances where the birth or subsequent arrangements for the baby are not clear, hospital or social work staff may be alerted.

5.5 If there are any concerns about the case a SIP2 should be completed and a Cause for Concern file generated following usual procedures.

6. Procedure

6.1 When a member of staff is made aware of a pregnancy as a result of a surrogacy arrangement they must contact the named midwife/doctor or nurse with responsibility for Safeguarding to enable him/her to make enquires or make the necessary enquires to satisfy themselves of the legitimacy of the arrangement i.e. that the treatment was undertaken by a licensed clinic.

- 6.2 If the treatment has been undertaken by a licensed clinic, local authorities can be assured that the treatment will have been in accordance with the Code of Practice. It is advised that written evidence is obtained. The prospective parents may have written confirmation from the licensed centre of their genetic relationship to the child and the fact that their treatment involved the surrogate. It is preferable that as far as possible any information is obtained by the people involved.
- 6.3 If Health professionals following consultation with the Named Midwife for safeguarding children are satisfied that the Code of Practice has been followed the local authority need not be informed unless there are other concerns being expressed that might indicate that the child may be a risk.
- 6.4 Where the circumstances of the conception and subsequent arrangements for the baby are not clear the parents should be informed of the need to inform social services to allow for further enquiries to be made.
- 6.5 A referral should be made using the appropriate form and emailed to social services in accordance with All Wales Child Protection Procedures 2002. The original referral should then be stored in the Cause for Concern file on labour ward.
- 6.6 On receipt of the referral the social services department will make such enquiries as they consider necessary, to enable them to decide whether they should take any action to safeguard or promote the child's welfare
- 6.7 All enquiries will be undertaken in accordance with the All Wales Child Protection Procedures 2002 and Working Together to Safeguard the Welfare of Children 2000.
- 6.8 In the event of the surrogate mother and prospective parents arriving at hospital without prior booking, when the surrogate mother is in labour, both the Police and Social Services should be informed immediately. This will allow for emergency action to be considered to promote the welfare of the child and ensure its immediate safety whilst further enquiries are undertaken.

7. Antenatal Care

- 7.1 During the pregnancy the surrogate mother will be cared for as her needs and condition necessitates. The midwives' legal duty of care lies with the interest of the surrogate mother and child.
- 7.2 The following documentation should be recorded in the maternal hand held records.
- 7.3 Surrogate mother's name, address and date of birth
- 7.4 The genetic father's name, address and medical history

- 7.5 Details of the commissioning parents, including names and address
- 7.6 If a fertility centre is involved, the medical history of any donor and name of contact person at the fertility centre
- 7.7 It is possible that the 'prospective' parents will accompany the surrogate mother during her antenatal visits. Therefore, it is in the interest of all parties that the midwife establishes a supportive relationship with all concerned throughout pregnancy, labour and postnatal period.
- 7.8 During the antenatal period, time should be spent discussing any issues and plans for delivery. Included in this should be to advise parents that legally consent in relation to the newborn has to be obtained from the surrogate mother. This will include consent for treatment, screening tests etc. The midwife should also inform the Paediatrician covering for Neonatal Unit of the surrogate pregnancy. It may be appropriate for them to meet with the surrogate mother and 'prospective parents' particularly if it is anticipated the baby may need admission or treatment.
- 7.9 The midwife has a legal duty to the surrogate mother and therefore it is paramount that her wishes are respected if a conflict of interest arises between her and the 'prospective' parents.
- 7.10 Permission from the surrogate mother must be obtained to document in the records this is a surrogate pregnancy. Health professionals should maintain the usual high level of confidentiality and only inform people on a need to know basis.
- 7.11 The surrogate mother and prospective parents may require an opportunity to discuss their plans for labour, birth and postnatal care. As far as possible the wishes of all should be taken into consideration but if there are any issues of conflict the surrogate mother's wishes are paramount. The midwife must involve a Supervisor of Midwives, Named Midwife for Safeguarding or Senior Midwifery Manager in these plans.

8. Labour

- 8.1 The surrogate mother may give the commissioning parents' permission to be present at the birth and hold the baby. This must be recorded in the notes antenatally in the birth plan.
- 8.2 If at any time the surrogate mother wishes for the commissioning parents to leave – her wishes must be respected
- 8.3 Birth notification will be completed in the normal way with the surrogate mother's details.

9. Postnatal

- 9.1 The baby should be kept with the surrogate mother; her wishes in terms of the involvement with the commissioning parents should be followed.
- 9.2 Names, address, and GP of the commissioning parents to be obtained and the appropriate GP, Midwife and Health Visitor informed to ensure the commissioning parents receive appropriate support following discharge.
- 9.3 Child Health to be informed that infant going to a different address from surrogate mother
- 9.4 Mother must care for the child until she goes home.
- 9.5 The handing over of the baby should NOT take place within the hospital unit. This should take place once the mother has been discharged and left the premises.
- 9.6 If the surrogate mother leaves the hospital without the baby the commissioning parents must NOT be allowed to take the baby and the Social Services must be informed.
- 9.7 It is important that the midwife monitors the progress of the surrogate mother during the postnatal period. A small study suggested that 75% of surrogate mothers experienced a degree of postnatal depression for 2-6wks following birth (Reame & Parker 1990). Though there is no conclusive data.
- 9.8 The baby should be registered in the normal way with the surrogate mother registering as the mother. Where a parental order has been granted by a court, the Register General will make an entry in a separate register and cross referencing to the entry in the existing Register of Births

10. Key Points

- 10.1 Confidentiality should be maintained where possible
- 10.2 Care should be offered to all concerned in a non-judgemental and supportive manner
- 10.3 The legal guardianship of the baby remains with the surrogate mother until the court has granted the parental order, which means that consent for medication and screening of the baby must be obtained from the surrogate mother, even if the baby has been handed over to the commissioning family.
- 10.4 Where possible the discussions and decisions about the need and preferences of the surrogate mother and commissioning family should be jointly made. However the wishes of the surrogate mother are paramount.
- 10.5 In accordance with law, once the child is born the interests of the child remain paramount throughout.

10.6 In some situations the Midwife may suspect a covert surrogate arrangement. The care she provides should not differ from what is stipulated within these guidelines.

10.7 Sharing relevant Information with the Health Visitor and GP is essential in order to fulfil safeguarding principles. The Pregnancy Information Sharing Process ensures this process is adhered to.

11. Audit

11.1 These guidelines will be audited within 1 year of implementation.

References

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Maternity Services

Checklist for Clinical Guidelines being Submitted for Approval

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