

SURROGACY GUIDELINE



TARGET AUDIENCE	NHS Lanarkshire Maternity and Neonates
PATIENT GROUP	Maternity and Neonates

Clinical Guidelines Summary

DEFINITION

The Surrogacy Arrangement Act 1985 (1) (amended 1990 (2)) 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”.

Who are the mother and father?

The Human Fertilisation and Embryology Act 1990 (2), 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.

The legal father depends upon other factors:

- i) If the surrogate mother is married, then her husband is the legal father.
- ii) 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.
- iii) 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 commissioning father.
- iv) If the surrogate mother is single and the treatment took place in a licensed clinic the child is legally fatherless.

Surrogacy Guidelines – Maternity Unit

Guideline Body

- Community/ named midwife should Inform Team Leader/ Manager of any known surrogacy arrangements.
- Care should be offered to all involved in a non-judgmental and supportive manner.
- Midwives should ensure that they keep accurate and contemporaneous records of discussions and decisions reached.
- Confidentiality is vital and disclosure made on a need to know basis. Any reference to the surrogacy arrangement in the medical records should only be made after discussion with and permission from the surrogate mother.
- The needs of the surrogate mother are always given priority and all (final) decisions rest with her. We would encourage surrogate mother to be accompanied by partner/ next of kin during delivery.
- Information to be given to the commissioning parents must be sanctioned verbally by the surrogate mother and documented in the records.
- Meet with surrogate and commissioning parent(s) antenatally, if requested, to identify their plans / wishes re A/N screening, parenthood preparation, birth plan, birth partners, infant feeding, immediate care of baby, postnatal visiting / accommodation for the commissioning mother and limitations within the unit that may exist regarding providing facilities if at capacity. These conversations should be documented, to outline appropriate release of information and intended cares of newborn in the event surrogate mother is incapacitated immediately post birth. It is important to remember and communicate that legally, commissioning parents have no legal rights to make decisions for baby in the immediate post birth period, regardless of biological relationship to child.
- The immediate postnatal period is a time of great emotional upheaval, which may be compounded in a surrogacy arrangement and great sensitivity is required in handling both the surrogate and the commissioning parents. Where there is conflict the midwife must focus her care on the surrogate mother and the baby. Seek support from senior Midwifery team in this instance.
- A child born to a surrogate mother must be registered as her child.
- The commissioning parents, even if they have taken the child, have no legal relationship with it and no rights in law until a parental order has been made or unless the commissioning father is named on the birth certificate.
- The HFEA advises that, until the parental order comes into force, strictly speaking it is the legal mother who should give consent for screening of the newborn.
- Commissioning or intended parents will apply for a parental order (if the genetic makeup of baby comes from either or both of them) or an adoption order where

Lead Author	Clare Patterson	Date approved	December 2023
Version	1	Review Date	December 2026

Surrogacy Guidelines – Maternity Unit

gametes from either of the commissioning parents have not been. Until this time (6 weeks – 6 months) the legal mother is the surrogate mother.

- Handing over the baby will take place following discussion and agreement with the surrogate mother. The outcome of this discussion and agreement must be documented in the maternal and neonatal records.
- The surrogate mother is cared for as per routine postnatal care guidelines.
- In Scotland, having the name of the father on the child's birth certificate will ensure he has full and equal parental rights and responsibilities.

References/Evidence

References

1. Surrogacy Arrangements Act (1985) HMSO London
2. Human Fertilisation & Embryology Act (1990) HMSO London

Bibliography

British Medical Association (BMA) (1996) **Changing conceptions of motherhood: The practice of surrogacy in Britain** BMA London

Brazier M, Campbell A, Golombok S (1998) **Surrogacy, Review for health ministers of current arrangements for payment and regulations. Report of the review Team (Brazier Report)** TSO London

Childlessness overcome through surrogacy (COTS) (1997) **Childlessness overcome through surrogacy: comprehensive guide to surrogacy** COTS London

Children (Scotland) Act 1995

Dimond B (1994) **The legal aspects of midwifery** Books for Midwives Press Cheshire

Human Fertilisation and Embryology Authority (2005/6) **Guide to Infertility** HFEA London

Jones SR (200) **Ethics in Midwifery** 2nd ed Elsevier Mosby London

Lead Author	Clare Patterson	Date approved	December 2023
Version	1	Review Date	December 2026

Surrogacy Guidelines – Maternity Unit

Jones SR & Jenkins R (2004) **The Law and the midwife** 2nd ed Blackwell Publishing Oxford p145-7

Jones SR (2006) **Surrogacy: The legal position and the midwife’s duty of care** British Journal of Midwifery 14:5 p256

RCM (1997) **Position Paper no 18: Surrogacy: Defining Motherhood** RCM London

Registration of Births, Deaths and Marriages Scotland Act 1965

Warnock M (1985) **A question of life** Blackwell Ltd Oxford

Resources

www.surrogacyuk.org

www.surrogacyuk.org.uk

Useful Information

Birth certificate – is issued by the registrar of Births, Deaths and Marriages. Normally the birth of a surrogate baby will be registered by the surrogate herself and her name will be entered as the mother. The person named as father depends upon certain rules contained with the Human Fertilisation and Embryology Act 1990 and the Registration of Births, Deaths and Marriages Scotland Act 1965.

Birth father – is the surrogate’s husband unless it can be shown that he did not consent to the surrogacy.

Birth mother – is the legal term for the woman who gives birth to a child as a result of a surrogacy arrangement regardless of whether the child resulted from her egg or not, in accordance with Section 30 of the Human Fertilisation and Embryology Act 1990.

Children (Scotland) Act 1995 – is the main legislation for matters to do with children and families. Its relevance for surrogacy lies mainly in the principle of parental responsibility and in the availability of parental responsibility arrangements.

Commissioning mother / father – the person/persons who have made an arrangement with a surrogate mother to carry a child for them.

Lead Author	Clare Patterson	Date approved	December 2023
Version	1	Review Date	December 2026

Uncontrolled when printed - access the most up to date version on www.nhsguidelines.scot.nhs.uk

Surrogacy Guidelines – Maternity Unit

Human Fertilisation and Embryology Act 1990 – for the most part effective from October 1994, this is the main piece of legislation relating to fertility treatment. A Parental Order can be made under S30 of the act effectively transferring rights over the child held by the surrogate (birth) mother at birth to the commissioning parents. The act also provides that the surrogate’s husband is the birth father of the baby unless it can be shown that he did not consent to the surrogacy which the act calls “treatment”.

Law – 4 acts of parliament have a bearing on surrogacy

- Registration of Births, Deaths and Marriages Scotland Act 1965
- Surrogacy Arrangements Act 1985
- Human Fertilisation and Embryology Act 1990
 - Adoption and Children (Scotland) Act 2007 (“the 2007 Act”) (in regulation 3 and Schedule 3)
 - Parental Orders (Human Fertilisation and Embryology) (Scotland) Regulations 2010
- Children (Scotland) Act 1995
- Adoption and Children (Scotland) Act 2007 (“the 2007 Act”) (in regulation 3 and Schedule 3)

The Court jurisdiction which will be appropriate when a Parental Order is applied for is that covering the areas of residence of the applicant couple and the handed over baby.

Registration of Births, Death and Marriages Scotland Act 1965 – legislation that relates to registering the births of babies. When registering a surrogate birth, the surrogate should tell the registrar that she is the mother of the surrogate baby in question. It is a criminal offence to give false information to the registrar.

Surrogacy Arrangements Act 1985 – legislation to regulate certain activities in connection with arrangements made with a view to women carrying children as surrogate mothers.

Lead Author	Clare Patterson	Date approved	December 2023
Version	1	Review Date	December 2026

Surrogacy Guidelines – Maternity Unit

Appendices

1. Governance information for Guidance document

Lead Author(s):	Clare Patterson
Endorsing Body:	Maternity Clinical Effectiveness Group
Version Number:	
Approval date	December 2023
Review Date:	December 2026
Responsible Person (if different from lead author)	

CONSULTATION AND DISTRIBUTION RECORD	
Contributing Author / Authors	CEG
Consultation Process / Stakeholders:	Circulated
Distribution	All in Maternity/ Guideline app

Lead Author	Clare Patterson	Date approved	December 2023
Version	1	Review Date	December 2026

Surrogacy Guidelines – Maternity Unit

CHANGE RECORD			
Date	Lead Author	Change	Version No.
15/04/2024	Clare Patterson	N/a 1 st	1
			2
			3
			4
			5

Lead Author	Clare Patterson	Date approved	December 2023
Version	1	Review Date	December 2026