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Submitted to The Law Commissions' Consultation on Surrogacy
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About you

1 What is your name?

Name:
Anthony Horan

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:

Catholic Parliamentary Office of the Bishops' Conference of Scotland

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?

Email address:
ahoran@rcpolitics.org

6 What is your telephone number?

Telephone number:
0131 556 6771

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:

Not Answered

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

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:

11 Consultation Question 4:

Not Answered

Please provide your views below:

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?

Not Answered

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

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

14 Consultation Question 7:

No

Please provide your views below:

We oppose surrogacy in principle.

The surrogate is the/a biological mother of the child. The law should reflect this reality and ensure that the surrogate has sufficient time after the birth to decide whether she wants to proceed with the surrogacy 'arrangement' or to keep the child, or to arrange alternative care for the child. This is in line with the long-standing rule for the allocation of legal motherhood, which links motherhood with gestation (rather than genetics or intent), and on which the current approach to legal motherhood in surrogacy is based. The proposed move towards the intent-based approach to legal parenthood, which was 'invented' by the California Supreme Court in the context of commercial surrogacy, is a subtle step towards the commercialisation of conception and human life. Moreover, the research-based evidence cited in the consultation paper in support of the removal of the gestational approach to legal parenthood is rather limited and lacking in critical appraisal. Similarly, the claim that 'many' jurisdictions allow intended parents to obtain legal parenthood at birth is not substantiated by tangible evidence as only 8 US States and 6 further jurisdictions are listed. Therefore, it seems that the acceptance of the intent-based approach to legal parenthood in surrogacy is not as widespread as claimed in the consultation paper. Moreover, a number of jurisdictions that previously served as the 'hubs' of surrogacy tourism but recently rejected this practice due to concerns over the exploitation of women have now regulated or are in the process of regulating surrogacy whilst using the gestational approach as a basis for the regulation (for example Thailand and Cambodia).

This is, ultimately, the detachment of a child from his or her mother. The potential for emotional and psychological distress and harm, particularly for the mother and later, the child, is significant and should not be underestimated.

Surrogacy commodifies women and children, reducing them to objects, whose primary use (in surrogacy) is to satisfy the desires of other human beings.

15 Consultation Question 8:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

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?

Not Answered

Please provide your views below:

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:

18 Consultation Question 11:

No

Please provide your views below:

We oppose surrogacy in principle.

The presumption of parenthood should always favour the child's biological mother, even in the case of a surrogacy 'arrangement'. The law should not place an obligation on her to object to 'acquisition' of legal parenthood by the intended parents, but rather allow her, by positive action, to relinquish her parental rights and responsibilities, as is possible under the current approach to legal parenthood in surrogacy embodied in the Human Fertilisation and

Embryology Act 2008.

The multitude of emotions around giving birth to a child should not be underestimated, nor should the amount of time that the surrogate may need to deal with these emotions and to decide if she would like to keep the child.

The law must not assume that surrogates are aware of the legal process involved.

19 Consultation Question 12:

Yes

Please provide your views below:

We oppose surrogacy in principle.

20 Consultation Question 13:

Not Answered

Please provide your views below:

21 Consultation Question 14:

Not Answered

Please provide your views below:

22 Consultation Question 15:

No

Please provide your views below:

The surrogate's spouse should continue to be the legal parent of the child born as a result of the surrogacy 'arrangement'.

Not Answered

Please share your views below:

23 Consultation Question 16:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

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?

Not Answered

Please provide your views below:

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:

26 Consultation Question 19:

Not Answered

Please provide your views below:

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

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:

A child's best interests are served when raised in a loving environment by their biological mother and biological father.

29 Consultation Question 22:

Please provide your views below:

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

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:

33 Consultation Question 26:

Not Answered

Please provide your views below:

34 Consultation Question 27:

No

Please provide your views below:

As per our response to Q11 the presumption of parenthood should always favour the child's biological mother, with the law allowing her to relinquish parental rights and responsibilities by positive action.

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?

Other

Please provide your views below:

It is agreed that the surrogate should retain parental rights and responsibilities. As for the surrogate's 'right to object' to the acquisition of legal parenthood by the intended parent, see our response to Q11.

36 Consultation Question 29:

Please provide your views below:

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?

Not Answered

Please provide your views below:

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:

Please provide your views below:

40 Consultation Question 33:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

41 Consultation Question 34:

Please provide your views below:

Please provide your views below:

Please provide your views below:

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

Not Answered

Please provide your views below:

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:

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?

Not Answered

Please provide your views below:

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:

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:

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?

Not Answered

Please provide your views below:

Please provide your views below:

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?

Not Answered

Please provide your views below:

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?

Not Answered

Please provide your views below:

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?

No

Please provide your views below:

The commercialisation of pregnancy, which commodifies women and children, must be rejected. Removing the ban on advertising will lead to 'normalising' the practice in the eyes of the public, which is contrary to our general stance on surrogacy as a method of procreation.

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?

Not Answered

Please provide your views below:

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?

Not Answered

Please provide your views below:

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:

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?

Not Answered

Please provide your views below:

55 Consultation Question 47:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

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:

57 Consultation Question 49:

Not Answered

Please provide your views below:

Please provide your views below:

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:

59 Consultation Question 51:

Not Answered

Please provide your views below:

Please provide your views below:

60 Consultation Question 52:

Please provide your views below:

Please provide your views below:

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:

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:

63 Consultation Question 55:

No

Please provide your views below:

The court should not have the power to dispense with the consent of the surrogate in any circumstances. The right of the surrogate to consent to the transfer of legal parenthood to the intended parents is a fundamental safeguard which protects the rights of the surrogate as the biological and legal mother of the child. Although it may be appropriate for the court to dispense with the consent of the birth mother in adoption proceedings on the basis of the welfare of the child, such dispensation with parental consent is entirely inappropriate in the context of surrogacy where there has been no finding of fault against the surrogate regarding her care of the child. This is in contrast with the usual situation of an adoption where the child is being adopted from care, because the child is suffering, or likely to suffer, significant harm.

Not Answered

Please provide your views below:

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

64 Consultation Question 56:

Not Answered

Please provide your views below:

Please provide your views below:

65 Consultation Question 57:

Please provide your views below:

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?

Not Answered

Please provide views below:

67 Consultation Question 59:

No

Please provide views below:

Double donation should be prohibited. Double donation deprives the child of both biological parents. Moreover, it appears that there is no distinction between double donation and adoption. If the welfare of the child is indeed the guiding principle of child law, then more should be done to further improve our (intercountry) adoption system.

Please provide views below:

Not Answered

Please provide views below:

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?

Not Answered

Please provide your views below:

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?

Other

Please provide views below:

Double donation should be prohibited for the reasons set out in our response to Q59

70 Consultation Question 62:

Please provide your views below:

Please provide your views below:

71 Consultation Question 63:

Not Answered

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

72 Consultation Question 64:

Not Answered

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

73 Consultation Question 65:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Not Answered

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Not Answered

Please provide your views below:

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?

Not Answered

Please provide your views below:

77 Consultation Question 69:

Not Answered

Please provide your views below:

Please provide your views below:

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:

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?

Other

Please provide your views below:

There is an issue here with respect to the health and wellbeing of women, especially vulnerable women who provide surrogacy 'services' to the detriment of their health.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

81 Consultation Question 73:

Please provide your views below:

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

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:

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

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:

89 Consultation Question 81:

Please provide your views below:

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 payments should be legal except reimbursement of medical costs.
Commercialisation and thus, commodification, of women and children should not be permitted.

Not Answered

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

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?

Not Answered

Please provide your views below:

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:

The commercialisation of pregnancy and thus, commodification of women and children, must be rejected.

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

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:

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:

111 Consultation Question 103:

Please provide your views below:

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:

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 provide 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:

115 Consultation Question 107:

Please provide your views below:

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:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

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:

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:

We oppose surrogacy in principle. Surrogacy, or the outsourcing of reproduction, offends the dignity and the right of a child to be conceived, carried in the womb, brought into the world and brought up by his/her own parents. It sets up, to the detriment of families, a division between the physical, psychological and moral elements which constitute those families.

The Church's opposition to surrogacy in no way compromises her love for every human being. The Church celebrates all life, including those born through surrogacy. Their dignity and value as a human being made in the image and likeness of God is without question.

A huge oversight in this consultation is the incomprehensible failure of the Law Commission and the Scottish Law Commission to fully take into account the possible views and emotional and psychological harm of children brought into the world through surrogacy, especially when they discover later in life that they were the product of a surrogacy 'arrangement' and that they do not know one or more of their biological parents. The process of surrogacy

reduces children to mere objects, commodities to be created (and potentially purchased) to satisfy the desires of other human beings. Is surrogacy any better than human trafficking?

Further, there is little consideration given to the emotional and psychological impact of surrogacy on surrogates, especially the impact of the 'loss' of her baby. There is also no consideration of the physical impact on a woman who gives of her body to surrogacy. Indeed, it is nigh impossible to calculate the emotional distress and heartache experienced by a woman who carries a child in her womb for nine months and then, almost immediately on birth, is separated from that child forever.

The New Zealand neuroscientist and bioethicist, D Gareth Jones, expressed serious concerns about the detachment of mother and baby. He said: "Surrogacy...places the development of a crucial relationship on jeopardy, and it does this intentionally. This is a very high price to pay for providing an infertile couple with a child....However numerous our objections to surrogacy, a central one is the deliberate breaking of that intimate relationship between the biological or carrying mother, and the child...Surrogacy therefore places the development of a crucial relationship in jeopardy, and does this intentionally."

There are serious concerns too about the health of the child in the womb and the risk of abortion when the child does not meet certain 'requirements' or 'expectations' of the intended parents. For example, in 2010 in Canada a surrogate mother found that the child she was carrying had Down's Syndrome. The intended parents requested that the surrogate abort the child, however, the surrogate mother was reluctant to do so. The intended parents then referred to a contract they had agreed with the surrogate mother which declared that, should she refuse to have an abortion in such circumstances, they would be absolved of any further responsibility in relation to the child. Eventually the surrogate had an abortion.

We believe it is irresponsible and unacceptable for the Law Commission and the Scottish Law Commission to exclude, as part of the consultation, an examination of whether or not surrogacy should be allowed.

It is also unacceptable for the Law Commission and the Scottish Law Commission to arbitrarily declare that 'the law relating to surrogacy is now outdated and needs to be changed to reflect current attitudes towards surrogacy'. This statement is not substantiated in any way in the consultation document.

Last but not least, based on available evidence it appears that there is a difference between the level of acceptance of surrogacy as a method of assisted reproduction in Scotland and England. In England, the 'demand' for surrogacy services is significantly higher than the 'demand' for such services in Scotland, possibly justifying the need for a separate legal approach to surrogacy in Scotland. Unfortunately, the consultation paper fails to explicitly recognise this distinction or consider the possibility of Scotland adopting its own regulation of surrogacy.