

Glossary

We use the following terms within this Consultation Paper.

We are aware that the terminology used in the context of surrogacy is a sensitive issue. We have carefully considered what terminology is most appropriate in the context of our Consultation Paper, but we accept that some consultees may disagree with the terminology chosen. The definitions contained in this Glossary reflects how terms are used in this Consultation Paper. We acknowledge that not all the terms have universally accepted meanings, or are used the same way in all the literature.

Term	Definition
<i>Altruistic / non-commercial surrogacy</i>	A <i>surrogacy arrangement</i> in which neither the woman who becomes the <i>surrogate</i> , nor any surrogacy agency involved, makes a profit, and the arrangement is not enforceable as a matter of contract law.
<i>Artificial insemination</i>	A procedure where sperm are introduced into the reproductive system of a woman using a syringe. This process can be completed at home, without the involvement of a fertility clinic, or may take place within a clinic.
<i>Assisted conception</i>	An umbrella term which covers conception that does not take place naturally through sexual intercourse. Examples include <i>artificial insemination</i> and <i>IVF</i> .
<i>Baby / child / foetus</i>	<p>All these terms may be used to refer to the baby that the <i>surrogate</i> is carrying during her pregnancy.</p> <p>We have generally preferred to use the term baby or child, even whilst still in utero, unless the context is medical and reference to a foetus is, therefore, more appropriate. For example, while we generally refer to the <i>surrogate</i> carrying a child during pregnancy, we have also referred to a woman's ability to gestate a foetus to term.</p>
<i>British Infertility Counselling Association ("BICA")</i>	A registered charity that represents professional infertility counsellors in the UK.

Term	Definition
<i>Biological parent/parentage</i>	A term which can be used to refer to gestational and/or genetic parentage. In the Consultation Paper, we prefer to specify whether we mean <i>gestational</i> or <i>genetic parentage</i> , as applicable, but we may quote from sources that use the term “biological.”
<i>The Children and Family Court Advisory Support Service (“CAFCASS”)</i>	The public body in England which liaises with the court to provide a <i>parental order reporter</i> in <i>parental order</i> applications.
<i>The Children and Family Court Advisory Support Service Cymru (“CAFCASS Cymru”)</i>	The public body in Wales which liaises with the court to provide a <i>parental order reporter</i> in <i>parental order</i> applications.
<i>Commercial surrogacy</i>	A <i>surrogacy arrangement</i> in which the woman who becomes the <i>surrogate</i> and any agency involved charge the <i>intended parents</i> a fee which includes an element of profit. A commercial surrogacy arrangement may also be characterised by the existence of an enforceable <i>surrogacy contract</i> between the <i>intended parents</i> and the <i>surrogate</i> .
<i>Curator ad litem</i>	<p>In Scotland, a court appointed person whose duty is to act on behalf of the child in a <i>parental order</i> application, with a duty of safeguarding the interests of the child.</p> <p>In Scotland, a reporting officer is also appointed by the court to witness agreements to the parental order and to perform other duties prescribed by rules of court. The same person usually acts in both roles.</p>

Term	Definition
<i>Domestic surrogacy arrangement</i>	<p>A <i>surrogacy arrangement</i> where the <i>surrogate</i> and <i>intended parents</i> are both based in the UK, and where all elements of the process, including pre-conception screening, (<i>assisted</i>) <i>conception</i>, pregnancy and birth take place in the UK.</p> <p>We use this term in contrast to an international surrogacy arrangement, where all or some of the elements of the process take place outside of the UK.</p>
<i>The European Convention on Human Rights (the “ECHR”)</i>	<p>The <i>ECHR</i> is an international convention designed to protect human rights in Europe. Of most relevance to surrogacy are the rights contained in Articles 8 and 12 and 14 (a right to respect for an individual’s private and family life, the right to found a family, and protection from discrimination, respectively).</p> <p>The UK is a contracting state to the <i>ECHR</i>, and has implemented its provisions in domestic law through the Human Rights Act 1998.</p>
<i>The European Court of Human Rights (the “ECtHR”)</i>	<p>An international court established by the <i>ECHR</i>, which decides on applications alleging that a contracting state has breached one or more of the rights guaranteed by the <i>ECHR</i>.</p>
<i>Embryo</i>	<p>An organism formed by the fertilisation of two <i>gametes</i>. In human pregnancy, from a medical perspective, an <i>embryo</i> is classified as a foetus from the 8th week after the fertilisation of the egg.¹</p>
<i>Gamete</i>	<p>Human reproductive cells. Female <i>gametes</i> are called eggs and male <i>gametes</i> are called sperm.</p>

¹ <https://www.nhs.uk/conditions/pregnancy-and-baby/8-weeks-pregnant/> (last visited 31 May 2019).

Term	Definition
<i>Genetic parent or parentage</i>	A term which refers to the one or both of the two persons whose <i>gametes</i> were used to conceive a child.
<i>Gestational parent or parentage</i>	A term which refers to the woman who gives birth to a child.
<i>Gestational surrogacy</i>	<p>A <i>surrogacy arrangement</i> in which the <i>surrogate</i> is not genetically related to the child.</p> <p><i>Gestational surrogacy</i> involves the implantation of the <i>surrogate</i> with an <i>embryo</i> or <i>embryos</i> created in a process known as <i>IVF</i>. These <i>embryos</i> may be formed of the <i>intended mother's</i> egg and the <i>intended father's</i> sperm, although donor sperm or a donor egg can be used.</p> <p>We have preferred this term to that of “host” or “full” surrogacy which can also be used to describe this type of <i>surrogacy arrangement</i>.</p>
<i>Guardian ad litem</i>	In Northern Ireland, a court appointed person whose duty is to act on behalf of the child in a <i>parental order</i> application, with a duty of safeguarding the interests of the child.
<i>The Human Fertilisation and Embryology Authority (the “Authority”)</i>	The statutory body that regulates and inspects all licensed fertility clinics in the UK. It also regulates human <i>embryo</i> research.
<i>The Human Fertilisation and Embryology Authority’s Code of Practice (9th edition, January 2019) (the “Code of Practice”)</i>	The Human Fertilisation and Embryology Authority publishes the <i>Code of Practice</i> to provide guidance to bodies such as licensed fertility clinics to help them comply with their duties under legislation. Guidance in the <i>Code of Practice</i> is also designed to serve as a useful reference for members of the public, including patients, donors and donor-conceived people.

Term	Definition
<i>Infertility</i>	<p>In the context of an opposite-sex couple, the World Health Organisation defines infertility as a disease of the reproductive system defined by the failure to achieve a clinical pregnancy after 12 months or more of regular unprotected sexual intercourse.²</p> <p>In the context of an individual, we use “infertility” to mean a person who is unable to gestate a foetus or unable to provide <i>gametes</i> for the creation of an <i>embryo</i>.</p>
<i>Intended parents</i>	<p>The persons who have commissioned the <i>surrogacy arrangement</i>, and who intend to become the legal parents of a child born through surrogacy.</p> <p>Individually, we refer to an <i>intended parent</i> who is male as an “<i>intended father</i>” and an <i>intended parent</i> who is female as an “<i>intended mother</i>”.</p> <p>We prefer this term over “commissioning parent” (an alternative that is sometimes used) because of our view that the parties’ intentions are one of the defining features of a <i>surrogacy arrangement</i>.</p>
<i>In vitro fertilisation (“IVF”)</i>	<p>A medical procedure, used to overcome a range of fertility issues, by which an egg is fertilised with sperm outside the body, in a controlled environment – either a test tube or petri dish – at a fertility clinic.</p>
<i>Legal parenthood</i>	<p>A person or persons being recognised by law as being the parents of a child.</p>

² The International Committee for Monitoring Assisted Reproductive Technology and the World Health Organisation, *Revised Glossary on ART Terminology* (2009).

Term	Definition
<i>New pathway</i>	A term that we use to describe our overall new regulated <i>surrogacy</i> scheme which, if followed and, if the <i>surrogate</i> does not exercise her right to object within a defined period of time, would enable the <i>intended parents</i> to become the child's legal parents at birth.
<i>Northern Ireland Guardian Ad Litem Agency ("NIGALA")</i>	The public body in Northern Ireland which liaises with the court to provide a <i>guardian ad litem</i> in surrogacy cases.
<i>Parentage</i>	A term which focuses on the factual question of who shares a biological, principally <i>genetic</i> , connection with a child.
<i>Parental order</i>	An order that can be obtained from a court under sections 54 or 54A, HFEA 2008 which transfers <i>legal parenthood</i> from the <i>surrogate</i> (and in some cases her spouse or civil partner) to the <i>intended parents</i> , and extinguishes the <i>legal parenthood</i> of the <i>surrogate</i> and her spouse or civil partner, if any.
<i>Parental order reporter</i>	In England and Wales, a court appointed person whose duty is to act on behalf of the child in a <i>parental order</i> application, with a duty of safeguarding the interests of the child.
<i>Parental order route</i>	A term that we use to describe the existing process of the <i>intended parents</i> obtaining a <i>parental order</i> (a <i>post-birth order</i>).

Term	Definition
<p><i>Parental responsibility, and parental responsibilities and parental rights</i></p>	<p>In England and Wales, the legal concept of <i>parental responsibility</i> means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child's property.</p> <p>In Scotland, the legal concept of <i>parental responsibilities and parental rights</i> means all the obligations that parents, and those acting in place of parents, have towards their children and the powers they have to fulfil these obligations.</p> <p>These concepts include things such as bringing up the child, having contact with the child, consenting to the child's medical treatment and naming the child.</p> <p>The legal parents of a child usually have <i>parental responsibility / parental responsibilities and parental rights</i> by virtue of that status, but <i>parental responsibility / parental responsibilities and parental rights</i> can also be conferred on people who are not the legal parents.</p>
<p><i>Pre-birth order</i></p>	<p>A court order that, in some countries, in relation to surrogacy, is made before the birth of the child. It ensures the <i>intended parents</i> are deemed by the law to be the child's parents from the moment of birth.</p>
<p><i>Post-birth order</i></p>	<p>An order made by a court after the birth of the child, such as the UK's current system of <i>parental orders</i>. This order will transfer the <i>legal parenthood</i> of the <i>surrogate</i> (and her spouse or civil partner) to the <i>intended parents</i>, extinguish the <i>legal parenthood</i> of the <i>surrogate</i> (and her spouse or civil partner), and allow a new birth certificate to be issued for the child containing the <i>intended parents'</i> names.</p>

Term	Definition
<i>Social and / or psychological parent or parentage</i>	A term which refers to the relationship which develops through a person acting in a way that we would associate with a parent, such as providing for a child's needs.
<i>Surrogacy / a surrogacy arrangement</i>	The practice of a woman agreeing to become pregnant, and deliver a baby with the intention of handing him or her over shortly after birth to the <i>intended parents</i> , who will raise the child.
<i>Surrogacy agreement / contract</i>	<p>A written agreement between the <i>surrogate</i> and the <i>intended parents</i> regarding their intention to enter into a <i>surrogacy arrangement</i>, and the terms upon which they agree.</p> <p>Depending on which country's law applies, these <i>surrogacy agreements</i> or contracts may, or may not be, legally enforceable.</p>
<i>Surrogate</i>	<p>The woman who carries and gives birth to the child in a <i>surrogacy arrangement</i>, with the intention of handing him or her over to the <i>intended parents</i> shortly after birth, and transferring <i>legal parenthood</i> to them.</p> <p>From our discussions with stakeholders, we understand that <i>surrogates</i> themselves do not, generally, like to be referred to as the mother of the child, and so we have avoided the term "surrogate mother".</p>
<i>Traditional surrogacy</i>	<p>When the <i>surrogate</i> is genetically related to the child she carries because her own egg is used to conceive the child. A traditional <i>surrogacy arrangement</i> typically results from the <i>artificial insemination</i> of a <i>surrogate</i> with the <i>intended father's</i> sperm.</p> <p>We have preferred this term to that of "straight" or "partial" surrogacy which can also be used to describe this arrangement.</p>

Term	Definition
<i>Trans man / trans woman</i>	<p>A trans man is a person who is assigned female at birth, but who identifies and lives as a man.</p> <p>A trans woman is a person who is assigned male at birth, but who identifies and lives as a woman.</p> <p>We acknowledge that it may not be necessary or appropriate in all contexts to refer to the person's transgender status at all (for example following transition, many people may wish to be identified simply as a man or woman, as applicable). In the context of this Consultation Paper, we have referred to a person's transgender status to highlight the specific context in which surrogacy may apply to a transgender person.</p>

Abbreviations of legislation

Throughout this Consultation Paper, we have abbreviated a small number of pieces of legislation which we refer to frequently. These abbreviations are set out in the table below:

Full name of legislation	Abbreviation
The Human Fertilisation and Embryology Act 1990 / 2008	The HFEA 1990 / HFEA 2008
The Surrogacy Arrangements Act 1985	The SAA 1985
The Adoption and Children Act 2002 / The Adoption and Children (Scotland) Act 2007	The ACA 2002 / AC(S)A 2007
The Human Fertilisation and Embryology (Parental Order) Regulations 2018 ³	The 2018 Regulations

³ The Human Fertilisation and Embryology (Parental Order) Regulations 2018 (SI 2018 No 1412).