



Parental orders



What is a parental order?

A parental order is needed when a child is carried by a surrogate. It transfers the legal status as parents from the surrogate to the intended parents – that is, the couple that the child will live with once it is born.

This is important as without a parental order, one or both of the intended parents will not be legal parents in the UK. This could mean:

- * Not having the authority to make decisions about the child's education and medical care
- * Legal complications should you separate or divorce
- * Needing to find and involve the surrogate mother in future decisions involving the child.

Who can apply for a parental order?

Only couples can apply for a parental order. They must be married, in a civil partnership, or in an 'enduring family relationship'.

A number of further conditions must be met before the court will make a parental order, including:

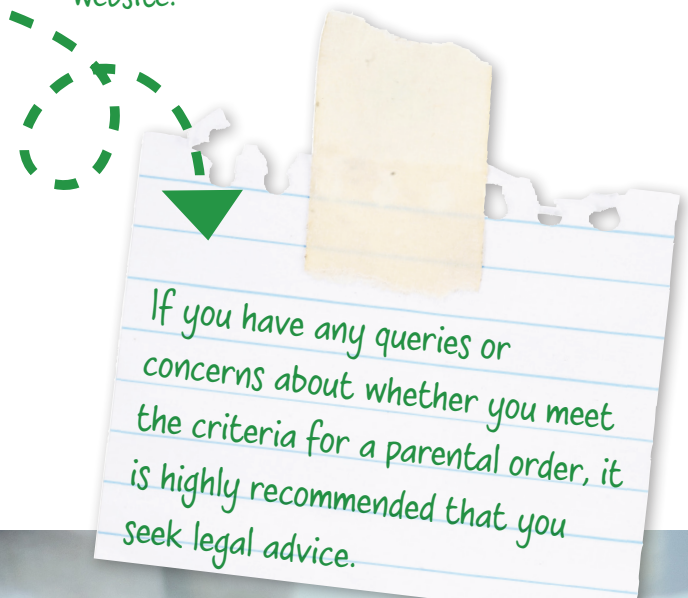
- * The application should be made within 6 months of the child being born
- * At least one of the intended parents must be 'domiciled' in the UK
- * The child must be living with the intended parents at the time of the application
- * No money can be exchanged, other than 'reasonable expenses'
- * Conception must have taken place artificially and the child must be genetically related to at least one of the intended parents.

The surrogate (and her partner) have signed a pre-birth contract; do I still need a parental order?

Under UK law, any contracts or agreements signed before the child is born are not enforceable. While you and your surrogate may both consider the child to be yours, legally, this will not be the case.

Before a parental order is made, the surrogate will be the child's legal parent. Her husband or civil partner, if she has one, will also be the child's parent. The consent of both the surrogate and her legal partner must be obtained before a parental order is made. This consent cannot be given until at least six weeks after the birth of the child.

It is part of the Parental Order Reporter's role to ensure that this consent has been given freely and with full understanding of what is involved. For more information about the Parental Order Reporter (POR) see our POR factsheet on our website.



If you have any queries or concerns about whether you meet the criteria for a parental order, it is highly recommended that you seek legal advice.

How can I apply for a parental order?

It is recommended that you seek legal advice before applying for a parental order, if you have not done so already. If you think you meet the criteria for a parental order, you can apply by completing a C51 court form. This can be found at www.hmctsformfinder.justice.gov.uk.

The completed form should be submitted to your local family court, along with:

- * An extra copy of the form for each of the respondents (the surrogate mother and her partner, if she has one)
- * A copy of the child's birth certificate
- * Your marriage or civil partnership certificate (if you have one)
- * A cheque for the court fee, made payable to HMCTS.

What will happen once I make an application?

Once your application for a parental order has been made, a Parental Order Reporter will be appointed. You can find out more about their role by reading our Parental Order Reporter factsheet on our website.

They will help the court to decide whether or not the parental order is in the child's best interest.

Further information

The following websites provide further information for surrogates and intended parents about parental orders and other aspects of surrogacy.

www.gov.uk/become-a-childs-legal-parent

www.surrogacyuk.org/home

www.brilliantbeginnings.co.uk

www.hfea.gov.uk/fertility-treatment-options-surrogacy.html

International Surrogacy

Sometimes, couples may decide to ask a surrogate from a different country to carry their child. The law in England can still apply even if the surrogacy took place in another country and couples must still obtain a parental order to be considered the legal parents in the UK.

The same criteria apply to an application for a parental order but there may be complications. Often, these concern the payments made, or obtaining proof of consent, which must be given freely and unconditionally by the surrogate. We recommend getting independent legal advice before asking a surrogate from a different country to carry a child.

International cases are usually transferred to the High Court. The specialist judges in the High Court will issue guidance concerning the evidence that is required before a parental order can be made but legal advice is often necessary.

Further guidance on international surrogacy can be found here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/261435/Intercountry-surrogacy-leaflet.pdf



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