Care in Surrogacy in Northern Ireland

Guidance for intended parents and surrogates

2019

Contents

Introduction

Surrogacy is increasingly an option for starting a family for people who are unable to conceive a child themselves. This guidance is intended to give the reader key information about surrogacy and the relevant legal process in Northern Ireland.

Surrogacy is part of the range of assisted conception options. The Department's view is that surrogacy is a pathway, starting with deciding firstly if surrogacy is suitable for you. Once you decide to proceed with surrogacy, you will then decide which surrogacy organisation to work with and which surrogate, intended parents (IPs) and/or egg/sperm donors to work with. You will then get to know these individuals and reach an agreement on how the surrogacy will work prior to trying to get pregnant. You will then support each other through pregnancy and then birth, applying for a parental order to transfer legal parenthood. You will ultimately have to help your child understand the circumstances of their birth.

1. •Is surrogacy for me?
2. •Which surrogacy organisation do I want to work with?
3. •Who will be our surrogate, IPs, egg/sperm donors?
4. •Getting to know each other and agree surrogacy agreement
5. •Conception (Fertility Clinic)
6. •Maternity
7. •Birth
8. •Transferring legal parenthood
9. •Supporting your child to understand circumstance of birth

This guidance gives more information about each stage.

This guidance applies to Northern Ireland only.

Background

Surrogacy is when a woman carries a baby for someone who is unable to conceive or carry a child themselves.

Terms frequently used throughout this guidance:

Intended parents (IPs)

These are couples or single individuals who cannot have a child themselves and who are considering surrogacy as a way to become a parent. Couples may be heterosexual or same-sex couples in a marriage, civil partnership or living together/co-habiting. To apply for a parental order (which is the way that legal parenthood is transferred from the surrogate to the IP(s)), at least one of the IPs in a couple must be a genetic parent of the child born to them through surrogacy. A single person may also apply for a parental order to transfer legal parenthood to them if they are an IP in respect of a surrogacy arrangement and are genetically related to the child. IP(s) generally prefer to be referred to as the parents of the child.

There are many reasons why IPs turn to surrogacy. These include:

- recurrent miscarriage
- repeated failure of IVF treatment
- premature menopause, often as a result of cancer treatment
- a hysterectomy or an absent or abnormal uterus
- a serious risk to health that may result from pregnancy
- LGBT+ parents wanting to create a family.

Surrogate

This is the preferred term for women who are willing to help IPs to create families by carrying children for them. A surrogate may or may not have a genetic relationship to the child that she carries for a couple. Surrogates generally do not prefer to be referred to as the mother or parent of the child.

There are many reasons why women decide to become surrogates. Some have experienced trouble conceiving themselves, some have seen friends or family struggle to have a family, and some wish to support families.

Money should not be a motivation for surrogacy. Surrogates in the UK are expected to be paid no more than reasonable expenses. The Family Court will consider all payments to the surrogate as part of the IPs' parental order application.

Straight surrogacy

Straight (also known as full or traditional) surrogacy is when the surrogate provides her own eggs to achieve the pregnancy. The intended father, in either a heterosexual or male same-sex relationship, provides a sperm sample for conception through either self-insemination at home (there may be additional health and legal risks to carrying out self-insemination at home compared to treatment in a clinic), or artificial insemination with the help of a fertility clinic. If either the surrogate or intended father has fertility issues, then embryos may also be created in vitro and transferred into the uterus of the surrogate.

Host surrogacy

Host (also known as gestational) surrogacy is when the surrogate does not provide her own egg to achieve the pregnancy. In such pregnancies, embryos are created in vitro and transferred into the uterus of the surrogate using:

- eggs from the intended mother fertilised with sperm from the intended father or donor; or
- eggs from a donor fertilised with sperm from the intended father, where the intended mother cannot use her own eggs, or the IPs are a same-sex male couple.

1. Understanding the risks

Legal Considerations

Before entering into a surrogacy arrangement you need to be aware of the legal position. Surrogacy is legal in the UK, although surrogacy arrangements are not enforceable in law. The Surrogacy Arrangements Act 1985 makes it clear that it is an offence to advertise that you are seeking a surrogate or are a potential surrogate looking for IPs. It is also an offence under that Act to arrange or negotiate a surrogacy arrangement as a commercial enterprise. However, there are a number of non-profit organisations (also known as 'altruistic') listed in the next section, that lawfully assist potential surrogates and IPs to navigate their surrogacy.

Some people enter surrogacy arrangements without the help of an organisation, for example those who are friends and family and those who wish to match independently. If you choose not to have the support of an organisation, you may wish to follow the process that an organisation would support you with.

There is further detail in '*What is a surrogacy agreement*?'

Other points to note:

- It is a criminal offence to advertise that you are looking for a surrogate or willing to act as a surrogate.
- It is a criminal offence for third parties (i.e. not the surrogate or IP(s)) to advertise that they facilitate surrogacy, although there are some exemptions for not-for-profit organisations.
- It is a criminal offence for third parties to negotiate the terms of a surrogacy agreement for any payment (e.g. a solicitor cannot represent IPs or surrogates in agreeing the terms).
- The surrogate (and, if she is married or in a civil partnership, her consenting spouse or civil partner) will be the legal parents of the child at birth.
- Following the birth, there is a legal process – the parental order process – to transfer legal parenthood from the surrogate to the IP(s).
- In order to apply for a parental order and transfer legal parenthood, at least one of the IPs (or the IP, in the case of a single applicant) must be genetically related to the baby.
- It is important that you can meet the conditions of a Parental Order before you go ahead with a surrogacy arrangement (or if you do not, to take legal advice).

While in practice it is rare, but there is a risk that a surrogate may change her mind about the IP(s) taking over the baby's care after birth. There is also a risk that the IP(s) may change their mind about becoming legal parents of a child born through surrogacy. There is a risk that the relationship between the surrogate and IP(s) may run into difficulties or there may be a difference of opinion about an aspect of care. There is also the risk that the IP(s) and surrogates will have different expectations of contact through the pathway.

It is therefore important that:

- you get to know each other properly before you enter into a surrogacy arrangement;
- everyone enters into it with full consent and understanding;
- you give yourselves time to develop trust; and,
- you discuss all potential outcomes and eventualities, which can then be recorded in a written agreement of your intentions. UK surrogacy organisations can help you with this process.

Emotional demands

It is important that both the IP(s) and the surrogate feel they can cope with the emotional demands of a surrogacy relationship and fully understand the implications for themselves and for any existing children that the surrogate may have. It may be advisable for both you and your surrogate/IP(s) to see a fertility counsellor (which can usually be arranged through your chosen clinic or via an independent British Infertility Counselling Association counsellor) and to seek a medical opinion from your GP before starting on the surrogacy pathway. Surrogacy organisations also hold detailed information sessions that ensure that IPs and surrogates understand surrogacy and the risks and implications.

Financial implications

Surrogacy has financial implications, and it is important that IPs understand the kinds of costs that may be associated with surrogacy, including reasonable expenses for the surrogate and medical costs. A list of possible costs is provided in ***Reasonable Expenses*** below.

It is advisable to agree an estimate of expenses in advance of the surrogate and IP(s) getting to know each other properly. Surrogates should keep a record of any expenses incurred and any reimbursements made, which can be made available to the parental order reporter and the judge as part of the court hearing for a parental order.

2. Starting the surrogacy process

It is not generally recommended that those considering surrogacy do so independently. You may wish to consider joining one of the three main UK surrogacy organisations. Surrogacy organisations are not-for-profit and can play a vital role in informing and supporting IPs and surrogates, as well as mitigating the risks involved in surrogacy.

If you do not use one of these organisations, you should consider the information in this guidance very carefully in order to minimise the risks of something going wrong with your surrogacy arrangement.

The three main UK surrogacy organisations are:

- **Brilliant Beginnings (BB)**
  Website: http://www.brilliantbeginnings.co.uk/
  Facebook: http://facebook.com/Brilliant-Beginnings
  Twitter: @BrillBeginnings

- **Childlessness Overcome Through Surrogacy (COTS)**
  Website: http://www.surrogacy.org.uk/
  Facebook: https://www.facebook.com/groups/480648862111229

- **Surrogacy UK (SUK)**
  Website: https://www.surrogacyuk.org/
  Facebook: https://www.facebook.com/SurrogacyUK.org/
  Twitter: @SurrogacyUKorg

Surrogacy organisations can help surrogates find IP(s) and vice versa. Joining an organisation may also help you to reduce the risks associated with surrogacy. The organisations listed above perform various checks (including medical checks and AccessNI) for all new members and aim to provide support throughout the surrogacy journey. Each organisation has its own set of processes to support the surrogacy pathway.

3. Surrogacy Agreement

What is a Surrogacy Agreement?

An agreement between the IP(s) and a surrogate (and her spouse or partner if she has one) is not a legally binding document but rather a statement of intention about how the arrangement will work and the commitment that each party is making to the other in advance of the surrogacy commencing. The main surrogacy organisations agree that it is fundamentally important to have a written agreement in order to ensure there is effective communication and mutual understanding between the IP(s) and surrogate.

It is advisable for the agreement to be discussed thoroughly in advance so all parties feel confident about all the details. If there are any parts in which there is not agreement, then the parties should consider whether further advice or help should be sought. Sources of advice and help may include, for example, clinicians, fertility counsellors, and non-profit agencies.

Once everyone is happy with the surrogacy agreement, it is usually written up and signed by everyone involved so that each party can keep their own copy. Remember to keep a copy safely. A written surrogacy agreement may provide a reference point if plans change as the journey progresses as well as providing a valuable tool to enable open and transparent discussion in relation to critical issues and decisions.

Affidavits

Later in the pregnancy, it is considered good practice for all parties to swear legal statements, known as affidavits, explaining the circumstances, and confirming that they have entered into the arrangements willingly with knowledge of what is involved and agreed.

The affidavits can also set out the parties' intentions as to when the child will be handed over after birth, and that the father and surrogate mother will register the birth together with the father's name on the birth certificate.

What to include in the Surrogacy Agreement

Each surrogacy arrangement is different and it is important to explore each part of your plan carefully. Key parts of a surrogacy agreement may include:

- IPs' details
- surrogate's (and partner or spouse's) details
- marital status of all parties at conception
- pre-conception arrangements
- conception arrangements (embryo creation, clinic or home insemination details, number of cycles, number of embryos to be transferred etc.)
- pregnancy arrangements (health and well-being, emotional support, tests and clinic/ante natal appointment arrangements, for example, how much information the IPs will be provided with and how much involvement they will have with appointments and decisions)
- birth arrangements
- post-birth arrangements
- things that could go wrong (miscarriage, still birth, multiple pregnancy where a decision may be needed on foetal reduction, decisions to terminate, breakdown of relationship) and how you would intend to handle these scenarios
- communication and future relationship, including how open you will be with any children about their origins

- legal implications and parental order application arrangements, and
- expenses and costs (how much will be paid, when it will be paid and how it will be paid – it is also important to consider if payments will be staggered, and under what circumstances payments to the surrogate might be stopped, increased or decreased) including:
    - surrogate's expenses
    - surrogate's partner's expenses
    - treatment costs
    - legal costs
    - other costs.

Reasonable Expenses

The surrogate mother cannot be paid for entering the arrangement, but she can receive reasonable expenses from the parents for agreeing to carry the child.

As part of the Surrogacy Agreement, it is sensible to set planned expenses out in as much detail as possible including details of how payments will be made, when they will start and when they will stop. This will help everyone budget appropriately and will help the IP(s) keep a record of what has been paid.

When the intended parents apply for their parental order, the family court will consider what has been paid to the surrogate. The court process will be as straight-forward as possible if no more than reasonable expenses have been paid. While the law does not provide a definition of 'reasonable expenses', there have now been a significant number of parental orders made by the family court.

Every case is different and what is reasonable in the particular circumstances of a case will depend on the specific circumstances. As a guide, the court has generally accepted as expenses:

- the surrogate's loss of earnings
- the surrogate's partner/spouse's loss of earnings
- additional childcare to support pregnancy and clinic/antenatal visits
- help with additional cleaning to support pregnancy
- additional food and other supplements
- additional classes or therapies to support pregnancy
- travel and accommodation before, during and after pregnancy (whilst setting up the surrogacy arrangement, treatment and in recovery)
- maternity clothes
- a modest recovery break for the surrogate and her family, and
- other incidental expenses that relate to the treatment and pregnancy.

It is generally accepted practice for the parties to a surrogacy agreement to estimate their expenses at the start, so that an agreed sum for expenses can be clearly recorded in their agreement and the payments can be spread over the course of the pregnancy if required.

As part of the IP(s)' court application for a parental order, there is a need to disclose precisely how much was paid to the surrogate and what it was for. If the court thinks that the IP(s) have/has paid more than reasonable expenses then it will need to decide whether to 'authorise' the additional payments retrospectively to make a parental order. In doing so, the court's paramount consideration will be the child's welfare. If you have any concerns you may wish to consider whether to seek legal advice.

Other costs that you might incur include:

Treatment Costs

If conception is taking place at a fertility clinic (either with a host or straight surrogacy), there will be a cost. The costs are likely to increase significantly if multiple attempts at fertility treatment are required. If you are using an egg or sperm donor, there will be additional costs to pay, including their expenses if the donor is someone known to you (a friend or family member).

Wills

It is sensible to consider whether to put a will in place or update an existing will. A will may be a valuable tool to protect the child in the event of the intended parents' or the surrogate's death, by appointing appropriate guardians or clarifying the intentions of the deceased in relation to any inheritance.

Insurance

As with any pregnancy, a surrogate pregnancy carries some risk and so having life insurance in place for the surrogate may be advisable. This may be covered by an existing policy, but if not you may wish to take out additional insurance.

Non-profit Organisation or Agency Fees

If you are working with one of the non-profit organisations it is important to budget for their fees/membership costs. These will vary according to the organisation.

Legal Costs

As of April 2019, the court fee for your parental order application is £124. You may also wish to budget for legal advice and/or legal representation. This is not mandatory, but both the UK regulator (the Human Fertilisation & Embryology Authority (HFEA)) and the family court recommend legal advice for anyone embarking on a surrogacy arrangement, and some UK clinics require that legal advice is sought at the outset. Many parents represent themselves in parental order applications, particularly in straightforward UK surrogacy cases. Legal costs can vary from a few hundred pounds upwards depending on the level of advice and support that you would like.

Later in the pregnancy, you might consider swearing legal statements, known as affidavits, surrounding the surrogacy plan. More information is given in '*Affidavits*'.

4. Trying to Conceive

The trying to conceive (TTC) stage can be difficult for everyone. All parties will have high hopes and expectations, but it is important to understand that several attempts may be required to achieve a pregnancy.
It is difficult to give success rates for surrogacy as there are so many relevant factors, including:

- the surrogate's ability to get pregnant;
- the age of the woman whose eggs are being used;
- the usual success rates for the type of treatment you are having; and
- the quality of the father's or donor's sperm.

The age of the woman who provides the egg is the most important factor that affects chances of pregnancy. Pregnancy rates per embryo transfer for women of all ages is 26.5%, but for women aged between 40 and 42 this is 13.7%.

The aim of treatment should be to have a single healthy baby, as twins or more carry additional risks for mothers and babies. Therefore if two embryos are replaced in any cycle of treatment, the surrogate and IP(s) should discuss the implications before the embryo transfer.

It is essential that all parties have support during treatment, as this can be a stressful time. Many surrogates and IPs will attend a counselling session (with their fertility clinic, if they are using one), which can help to identify how to best meet these needs.

Many surrogates and IPs choose to attend fertility clinic appointments together, where this geographically possible. If the IP(s) are/is unable to attend appointments, then the surrogate may wish to keep them fully informed about progress in line with their surrogacy agreement.

Practical support

Many people find it helpful to have a plan for the day the pregnancy test is carried out, so that everyone feels they are giving and receiving the right level of support, particularly if the result is negative. A negative result will be disheartening for everyone and it is important that the IP(s) and surrogate recognise that they may each deal with the news differently and so have different requirements for support.

Professional support

If more than one attempt to conceive is required, clinics may advise a different type of treatment. Parties often find that it is important that the surrogate and IP(s) are happy to discuss any decisions that need to be made openly and that they do so, so that everyone understands all the risks and potential outcomes before proceeding (or not proceeding).

Emotional support

IP(s) and surrogates should seek emotional support from a fertility counsellor, particularly if the process of achieving a pregnancy is prolonged, to explore coping strategies in order to minimise the risk of treatment and its aftermath having a negative impact on the other areas of the IPs' and surrogate's lives.

Choosing a fertility clinic

There are many HFEA-licensed fertility clinics in the UK that can provide the assisted conception necessary for your surrogacy arrangement. You may wish to take account of the following points when choosing the right clinic for you:

- Have/Has the IP(s) already been through treatment with a clinic, and/or do you already have frozen embryos stored in a particular clinic? NB: Most clinics can arrange to transport frozen embryos to another UK clinic, but may need permission to export them to a clinic abroad.
- Do you need donor eggs or sperm, and does the clinic have a donor bank or a waiting list?
- Does the clinic have experience of surrogacy arrangements, and what support is provided?
- What are the success rates of the clinic (see the HFEA website)?
- How close is the clinic to the surrogate (to minimise her travelling times and the disruption to her life)?
- The HFEA has an online clinic finder tool where you can search for clinics in your area, refining this by the treatments that they offer.
- Cost – this can vary widely between fertility clinics, it is important to ask the clinic for a cost breakdown before you commit to cost of an initial consultation.

Fertility treatment for host surrogacy

It is important to remember that surrogacy takes time, patience and a lot of co-ordination and like standard IVF, may require several attempts before a successful pregnancy is achieved. IVF should always be looked at as a course of treatment rather than just one single cycle of treatment. Having this expectation from the outset can be invaluable. Clinics will talk you through the treatment and associated risks.

Host surrogacy is unique because this type of pregnancy can involve not just one woman, but two and, if fresh embryos are to be used, cycles may be synchronised to ensure the embryo is placed in the surrogate's womb at the optimal time for their implantation. This type of treatment requires extra care and thought by health professionals managing surrogacy treatment in comparison with traditional IVF treatment because care needs to be co-ordinated between intended parents, surrogates and egg donors, if used.

Creating embryos for use in host surrogacy

In host surrogacy, embryos are created by using the IP's own sperm and/or eggs. If the intended mother is unable to use her own eggs, or if they are a same-sex male couple, donor eggs will be used. Clinics offer altruistic egg and sperm donors or egg donors who have participated in egg sharing schemes. IPs will have some choice about the physical characteristics of the donor. In the case of a same-sex male couple, UK clinics can only use one of the IP's sperm sample per cycle.

Treatment can either be with fresh or frozen embryos. This means using embryos that have just been created by IVF and transferred immediately (fresh) or using embryos that have already been created in a previous IVF cycle but stored for later use (frozen). If the IP(s) have/has already stored embryos, a frozen embryo transfer cycle will be planned. If the IP(s) are/is creating fresh embryos for transfer, the surrogate will need to take medication to synchronise her menstrual cycle with the cycle of the woman providing the eggs (whether this is the intended mother or an egg donor). In both cases, the surrogate will take some medication to support successful implantation and pregnancy.

Clinics will provide guidance on what treatment offers the best chance of success in your situation.

Testing at the clinic for intended parents (IPs)

The law in the UK regards surrogacy as a form of embryo or gamete donation. The IP(s) undergoing surrogacy through a fertility clinic will therefore need to undertake various blood tests prior to attempting treatment, and they will be screened in line with requirements for egg and sperm donors.

They will have a detailed medical consultation and will undergo genetic screening as well as testing for specific diseases such as Hepatitis B, Hepatitis C and HIV. Further testing for any other infectious diseases may also be performed if the IP's medical and/or recent travel history indicates there may be a risk.

An intended father will also need to have his sperm analysed in accordance with the HFEA's guidance. The sperm will then need to be quarantined and blood tests repeated following any quarantine period. The quarantine period is usually for six months, so IPs need to take this into account when planning treatment. Alternatively, it is possible to create embryos from fresh sperm and eggs and quarantine the actual embryos, again repeating the blood test after the quarantine period is complete.

Testing at the clinic for surrogates

The surrogate will usually have her initial consultation at which her medical and obstetric history will be taken as well as appropriate medical consideration of her suitability to be a surrogate. Her blood will be screened for infectious diseases and the surrogate will be given information regarding the treatment cycle and medication.

The surrogate's partner (if she has one) is usually required to attend this initial appointment with the surrogate so he or she also understands the processes involved (and because if they are married or in a civil partnership he or she will be the legal parent of the child at birth). The surrogate's partner will usually also be required to undertake blood testing for communicable diseases.

To give the embryos the best chance the surrogate may also be required to have a saline infusion sonogram scan (SIS), a specialist ultrasound scan, which checks for abnormalities inside the uterus or anything that may impact on the chances of a successful pregnancy. The clinic will be looking for any previous scar tissue, checking that the lining of her uterus is healthy and looking for any abnormalities to either the lining or the uterus itself such as benign uterine growths like polyps or fibroids.

Counselling

Most clinics have a requirement that the surrogate, IP(s) and egg donor (if applicable) will separately have participated in counselling prior to treatment. The counselling helps to ensure that all parties have fully explored the implications of having a child conceived through surrogacy and identified any particular support needs that may arise during the surrogacy arrangement and afterwards. Specialist fertility counselling is usually available from the clinic throughout the treatment, sometimes for an additional cost.

Legal advice

Some clinics may require that the IP(s) have/has taken legal advice in advance of treatment commencing to ensure there is understanding about the parental order application and the clinic may ask for a letter to confirm that this advice has been sought. Other clinics may want to see the surrogacy agreement to ensure the main decisions have been discussed and agreed.

Clinic forms and consent

Clinic forms are a key part of all fertility treatment and it is vital that these are completed and filled in properly. These forms are needed to record consent to the various aspects of fertility treatment and to make sure that intentions regarding embryo creation, use, storage and disposal are recorded.

Where the surrogate is not married (or her spouse or civil partner does not consent to the treatment) the forms may also deal with who will be the child's legal parents at birth. The clinic will guide you in the completion of the relevant forms and there is also guidance available from the HFEA.

What does a typical IVF cycle look like?

The woman providing the eggs will take medication to stimulate her ovaries to produce a number of eggs. She will be monitored by ultrasound scan to check when the eggs are ready to be collected from the ovaries. The egg provider will then undergo a procedure to collect the eggs and on the same day as the egg collection, the eggs will be combined with the sperm through either IVF (eggs and sperm are put together in a dish to allow the sperm to fertilise the eggs) or Intracytoplasmic sperm injection (ICSI) (each egg is injected with a single sperm) depending on what the clinic recommends to provide the best chance of success.

The clinic will monitor the resulting embryos closely during the days following fertilisation to see which ones develop – not all eggs will fertilise and not all embryos will develop. The remaining surviving embryos are graded and the most viable one or two are chosen for an initial transfer and any others of good quality are frozen for possible future use.

Embryo transfer

Embryo transfer into the surrogate will be performed on a specific day after fertilisation depending on the clinic's protocols. Usually one single embryo is transferred but sometimes the clinic will agree to transfer two embryos where there are compelling reasons to do so. HFEA guidance for treatment involving donated eggs is for a maximum of two embryos to be transferred.

Usually both the surrogate (and her spouse or partner, if she has one) and the intended parents will attend. Embryo transfer is a simple procedure, often likened to a cervical smear test and is performed by either a doctor or a nurse at the clinic. This is considered to be a relatively painless procedure and usually no sedation is necessary, but some may experience a little discomfort.

Results

The two weeks following embryo transfer are often the most anxious time of the whole treatment process. Clinics will advise on when to conduct a pregnancy test. The test is usually carried out around 14 days following embryo transfer to ensure the most accurate results.

The surrogate should continue taking medication until the pregnancy test date.

If the home test is positive, most clinics may want to confirm this with a blood test. The clinic will then usually organise a scan a few weeks later to check if the pregnancy is continuing and confirm either a singleton or multiple pregnancy. After this scan the surrogate will be referred to an obstetrician.

If the transfer is unsuccessful, the surrogate will be usually advised to stop all medication related to the surrogacy and she may experience a heavier than normal period. If everyone agrees to try another transfer, most clinics suggest waiting two menstrual cycles after the failed round before trying again.

Whatever the outcome, you can expect the clinic to provide the maximum support, advice and expertise to everyone involved. Everyone should be offered counselling and should be encouraged to take this extra support if it is needed.

Further information on fertility treatments is available on the HFEA website.

Traditional surrogacy treatment via intrauterine insemination (IUI)/home insemination

A traditional or straight surrogate is a surrogate who conceives using her own eggs via artificial insemination. This can be carried out at a fertility clinic or at home. If you go to a clinic, the insemination procedure will be optimised to give you the best chance of success. The surrogate will usually take medication to stimulate her ovaries a little.

The growth of one or two egg follicles will be monitored by ultrasound scan and the insemination straight into the uterus will take place on the optimum day. The semen sample is analysed and prepared in the laboratory on the day of the insemination. Stored sperm can be thawed out on the day of insemination, if it's not possible to provide a fresh sample, then the procedure will follow the above outline without the IVF stages.

If you are arranging a home insemination, then the first step would be to go to your GP who can give you advice on the best way forward.

5. Pregnancy and birth

Working with healthcare staff

It is important that you are clear and consistent with healthcare staff about your arrangements and how you would like to be referred to. For example, be prepared to introduce yourselves and explain the situation regularly, as you may encounter lots of different staff along the way.

You should be on time (or even early) for your appointments as you may need to allow extra time to explain your circumstances.

The Department of Health and Social Care in England has been working with healthcare professionals and surrogacy organisations to develop best practice guidance for healthcare professionals to ensure consistent care for all those in a surrogacy arrangement. This has been adapted for use in Northern Ireland, and is available on the Department of Health website (www.health-ni.gov.uk).

Whilst the healthcare professional's duty of care is to the surrogate and the baby, IP(s) should also receive sensitive and supportive care. If the hospital is talking about something that could have implications for the baby and its care and welfare, this should usually also be directed to the IP(s).

The IP(s) may wish to attend antenatal classes with the surrogate or on their own. The Health and Social Care service in Northern Ireland also runs classes for expectant parents.

Some NHS hospitals will have their own protocols for dealing with surrogacy pregnancies and some may not and so may vary their standard protocols. You may find it useful to find out what approach your local hospital takes so that you can better understand some of the issues you might face. For example, where surrogates and IPs opt for joint attendance at scans or at the birth, you will need to make sure the hospital is clear about your wishes, so surrogates can be accompanied by the IP(s) where it is safe and practical to do so.

IPs should be given all the support that other new parents receive in terms of advice for early care and bonding. This normally includes discussing contact, caring and feeding with each other as well as the hospital and care staff.

The baby will need to be 'linked' to the surrogate for the hospital's security reasons. In advance of the birth, it may be helpful for the surrogate and IP(s) to discuss the arrangements with the hospital. For example, you might request a hand-written band with the IPs' name for the baby.

Agreeing your birth plan

A birth plan is an important tool in any pregnancy. It is where parents record their wishes about how they would like to be treated during the pregnancy and birth, so that healthcare staff can follow this wherever possible. A joint birth plan from the surrogate and IP(s) is therefore an ideal place to reflect the key issues that have been agreed in the 'surrogacy agreement' and to record how you jointly would wish the pregnancy to proceed to birth.

It may be helpful to meet with a senior midwife before finalising your birth plan so that you are all clear about what the hospital can do to best support you.

The surrogate's wishes should take priority on the birth plan, as it is predominantly about what is happening to her body. The surrogate may change her mind for example about who should be with her during labour and this should be respected. However, the IP(s) have a key role in decisions relating

to the baby's health or care. Surrogacy organisations and/or fertility counsellors can provide vital support if any disagreements or questions arise.

Taking the baby home and hospital discharge

Some hospital trusts will allow the surrogate and baby to be discharged separately, but this may be different depending on individual hospital policy. It is important before the birth to be clear about what the hospital policy is in the event that the baby needs to stay in hospital longer than the surrogate. Would the hospital allow the surrogate to be discharged with the IP(s) taking over the care? Discharge from hospital should be mutually agreed between healthcare staff and the surrogate and IP(s), recognising that it will be the IP(s) who will be the main caregivers to the child.

There is no reason why the 'hand-over' of the baby to the IP(s) should take place outside hospital premises and hospital staff should not suggest this.

In the absence of other concerns or factors, there is also no need for a referral to be made to social services simply because the child is being handed over to the IP(s) as part of a surrogacy arrangement.

Treatment of an ill baby

The written consent of the surrogate should be provided to delegate treatment-related decision-making to the IP(s), and this should be clearly recorded in the medical notes, again taking into consideration the legal framework surrounding who can legally make those decisions.

The importance of the surrogacy agreement is clearly seen if the baby becomes ill or needs treatment following birth, before parental responsibility has been legally transferred. Where the surrogate has given her consent for the IP(s) to care for the child and this has been included in the surrogacy arrangement, it is usual practice for the IPs' wishes to be considered by staff regarding the treatment of an ill baby, and for them to be included in any important decisions regarding the health of that baby, whilst recognising that the surrogate has the overall responsibility until a parental order has been issued (BMA 2008).

Community support

Hospital staff should ensure the timely transfer of information about the child to the community health visitor team where the IP(s) live(s) so that care and support can be picked up locally in a seamless manner. The IP(s) and baby will also have a community midwife visit them, and the child's discharge should be communicated to the relevant community midwife, health visitor and GP in the normal way.

The surrogate will receive all discharge information relating to her aftercare, including information about follow-up care and appointments which may be via the community midwife, GP, or hospital team. The surrogate should have access to a community midwife for 28 days or more if required.

Follow-on care

Health visitors receive a hospital discharge in relation to the surrogate and the infant within the Health and Social Care Trust where the discharge address is located. A copy of this discharge is also issued to the community midwife. The community midwife will transfer the family to the Health Visitor after ten days if there are no concerns, however the surrogate and community midwife can retain contact for up to 28 days.

The health visitor team will continue to monitor the baby's progress as is routine for any child born in Northern Ireland. They will also assist and offer advice to the IP(s) with regards to general parenting, immunisations, development, postnatal depression (as above), how the new family is coping and settling in, and so on. There is no reason to consider that families formed following surrogacy

arrangements would be at increased risk of developing problems with coping (they are often seen as low-risk), but routine support and advice will also be required even in low-risk cases.

It would be for the GP to consider monitoring the surrogate with regards to postnatal depression and offer support and advice if required in accordance with the regional pathway.

Both the surrogate and IP(s) may also receive ongoing support and advice from the national altruistic surrogacy organisations, if they are members and choose to do so.

IPs should be encouraged to apply for a parental order, where appropriate (see below).

6. Parental order process

When a child is born through surrogacy, the intended parents or parent (IP(s)) should apply to the family court for a parental order after the child is six weeks old and before the child is six months old. The parental order transfers legal parenthood from the surrogate (and her spouse or civil partner, if she has one) to the IP(s). It can only be made with the surrogate's consent.

The parental order process takes place after birth and involves the family court, and a court-appointed social worker. This provides a valuable safeguard for the best interests of the child. Parental order applications are typically heard by magistrates. They will be heard by a High Court judge if the child is born overseas or there are questions over whether the parental order criteria are met.

The vast majority of surrogacy cases are straightforward and it is rare that a parental order to transfer parenthood to the IPs is not considered in the best interests of the child.

Before the parental order process is complete, the written consent of the surrogate should be provided to delegate treatment-related decision-making to the IP(s).

Parental order criteria

The criteria for a parental order are:

- IPs must be over 18 years old
- IPs can be married, in a civil partnership or living as partners in an enduring relationship or they can be single
- the surrogate, and her partner if they are married or in a civil partnership, must give consent (no earlier than six weeks after the birth of the baby)
- the child must have been conceived artificially and be genetically related to one of the IPs
- the child must be living with the IP(s)
- IP(s) must apply within six months of the birth of the child
- at least one of the IPs in a couple, or the IP if a single applicant, must be domiciled in the UK, and
- the surrogate should be paid no more than reasonable expenses, unless authorised by the court.

If there is any doubt about the IPs' eligibility to apply, or any concerns from either the IP(s) or surrogate about the other's commitment in the process, then legal advice should be sought. For the full criteria, please see sections 54 and 54A of the Human Fertilisation and Embryology Act (2008).

If all the legal criteria are met, the court's paramount consideration in making the parental order is the child's lifelong welfare.

Why you need a parental order

Parental orders transfer the legal parenthood for children born through surrogacy, and are considered the optimum legal and psychological solution for a child born through surrogacy.

Without a parental order, IP(s) may not be the child's legal parent in the UK unless parenthood is obtained through adoption. This means that the IP(s) may:

- not have the authority to make decisions about their child's education and medical care;
- not be able to travel abroad with the child;
- face legal complications should they separate or divorce;

- face difficulties with issues of inheritance and pensions; and
- need to find and involve the surrogate in future decisions involving their child.

You will need to apply for a parental order even if you have a surrogacy agreement, as these are not enforceable under UK law. If neither of the intended parents are related to the child, then the intended parents must proceed by way of adoption.

If the surrogacy takes place abroad but you live in the UK, the domestic law will still apply and you must obtain a parental order to be considered the legal parents in the UK. Cases involving a surrogate overseas will be heard by a High Court judge.

Further information on surrogacy overseas is available here: https://www.gov.uk/government/publications/surrogacy-overseas

Overview of the parental order application process

An outline the steps to obtain a parental order:

1. Application to the court by the IP(s)
IP(s) must submit a completed parental order application form to the court within 6 months of the child's birth. The court will usually ask IPs to submit a statement following the first hearing which can be prepared in advance; this should set out how they fulfil the parental order criteria and provide supporting evidence.

2. Appointment of a Parental Order Reporter (guardian ad litem) by the court
Once the application for a parental order has been made, the court will appoint a guardian ad litem pursuant to order 84A, Rules 4 & 5, of the Court of the Judicature (Northern Ireland) 1980.

3. Work completed by the guardian ad litem
The guardian ad litem, who represents the interests of the child, will investigate the circumstances of the case. This usually involves meeting with the IP(s), seeing them with their child, and ensuring that the surrogate freely consents to the application. This work typically takes between 8 to 12 weeks. The guardian ad litem will submit the results to the court in a 'parental order report' prior to the final hearing.

4. Court hearings on the parental order application
The court is responsible for setting the timetable for parental order proceedings. Generally the court will list an initial 'directions' hearing to check that the required evidence is available and in order. If there are complications, there may be more than one directions hearing. The final hearing is where the decision regarding the parental order will be made. In some courts, the initial directions may be given in writing so that there is only one court hearing.

Obtaining an updated birth certificate

The court will send a copy of the Parental Order to the General Register Office (GRO). The GRO will add the new entry to the Parental Order Register, or will contact the parents if they require further details (such as a parent's profession).

Once completed, the GRO will send a letter to the parents to let them know that they can order new birth certificates, both short and full. This can be done online:

https://www.nidirect.gov.uk/contacts/contacts-az/general-register-office-northern-ireland or via the contact details provided by the GRO in their letter.

7. Parental Leave

In 2015 the Northern Ireland Assembly passed legislation (the Work and Families (Northern Ireland) Act 2015) giving IPs in a surrogacy arrangement the right to adoption leave and pay. However, these rights are only available if the IP(s) intend(s) to apply for a parental order in respect of the child within 6 months of the birth and they expect that order to be granted.

Adoption leave is a “day one” right which means there is no qualifying period in employment - IPs who are employees, irrespective of how long they have been with their employer, may qualify for up to 52 weeks of adoption leave, providing they tell their employer at least 15 weeks before the baby is due that they intend to take adoption leave in respect of the child.

If the employer requests them to do so, the IP must provide a statutory declaration that they will apply for a parental order for the child with their spouse or partner (where there is a spouse or partner) and expect that order to be granted. If the IP who takes adoption leave has earned the lower earnings limit (set at £118 per week from April 2019, but changes annually) in an 8-week test period, and meets the test for 26 weeks’ continuous employment, that parent will also qualify for up to 39 weeks of statutory adoption pay, so long as they comply with the notification and evidence requirements.

Statutory adoption pay is currently payable at a rate of 90% of salary for the first 6 weeks – like statutory maternity pay. The remaining 33 weeks will be paid at the lower of 90% of salary or the flat rate (£148.68 per week from April 2019, but changes annually). Only one of the IPs in a couple may claim adoption leave and adoption pay, even if both of them are eligible. Where this occurs, they must decide between them who will claim these rights. The other parent, if employed, may be entitled to 1 or 2 weeks’ paternity leave and pay if they meet the requirements.

IPs in a couple who claim adoption leave or adoption pay are, like adoptive parents, able to reduce the amount of adoption leave and pay they take and share the untaken balance with the other 'Parental Order parent'. To do this the parents will need to opt in to the shared parental leave and pay system. This means that both parents can stay at home together with their new baby from the birth for up to 6 months, or they can stagger their leave so that one of them is always at home with their child in the first year.

None of the above rights affect the right of the surrogate who gives birth to the child. She will continue to be entitled to 52 weeks of maternity leave to recover from the birth, and to statutory maternity pay or maternity allowance if she satisfies the eligibility conditions.

In addition to the right to adoption leave and pay, IPs also have a right to unpaid time off to attend up to two ante-natal appointments with the surrogate, if she is agreeable.

8. After surrogacy

It may be advisable to discuss whether the IP(s) and the child will have continuing contact with the surrogate after the birth as part of the surrogacy agreement at the start of the pathway. If circumstances have changed you should discuss this openly and honestly with each other.

Telling the child they were born through surrogacy

Research suggests that openness, confidence and transparency about a child's origins from an early age (pre-school) is the best way to talk to children about their identity and origins. Your fertility counsellor should have given you the opportunity to explore how you feel about telling a child about their origins, and fertility counsellors would be happy to help you reach a decision about this at any time, as your thoughts and feelings about if, when and how to do this may change over time.

There are resources that can help you find the approach that is right for you and both Surrogacy UK and the Donor Conception Network provide support in this area, and Stonewall has resources and links to support for LGBT families.

What if surrogacy hasn't worked?

When surrogacy hasn't worked it is important to take some time before making decisions about what to do next.

It may be helpful to talk to a fertility counsellor who can help you come to terms with the outcome and think about next steps. A list of fertility counsellors can be found on the British Infertility Counselling Association (BICA) website. (See Annex B: Further resources.)

Annex A: Top Tips

Surrogates and IPs share their top tips for the surrogacy process:

- Think through how each other may be feeling at different points in the surrogacy journey and try and understand that their reactions may be different to your own. Consider why this may be the case and be respectful of their feelings.

- Try and understand that others who are not familiar with surrogacy may need time to understand what you are going through and how you feel about it.

- Talk openly and honestly with each other throughout the pregnancy and birth, sharing your feelings with each other.

- IPs should let their local GP or midwives know that they're expecting. It's helpful for local medical staff to know the new-born is due as he or she will be transferring into their care. A Health Visitor will make a home visit soon after the birth to check that everything is okay.

- During pregnancy, IPs could consider joining a local support group, which can help to prepare you for birth and beyond (even though you're going through surrogacy), and to build a local support network, for example through attendance of antenatal classes.

- IPs should let their employer know that they are going through surrogacy and make arrangements for parental leave and time off to attend ante-natal appointments where necessary.

- Ensure you have budgeted for all possible costs. Surrogacy is not a cheap or easy process. You need to be mindful of the costs before, during and after the birth.

- From the start have a plan for how much you want your surrogate/IP(s) to be a part of your family's life before, during and after birth and discuss with all parties.

Annex B: Further resources

- Surrogacy UK, Surrogacy in the UK, myth busting and reform sets out research on UK surrogacy and how surrogacy in the UK works in practice: https://www.surrogacyuk.org

- Donor Conception Network resources on how to talk to children about donor conception, from Donor Conception Network: http://www.dcnetwork.org

- Stonewall for support for LGBT families: http://www.stonewall.org.uk/help-advice/parenting-rights

- BICA's list of fertility counsellors by location: http://bica.net/find-a-counsellor/

- HFEA information on fertility clinics: https://www.hfea.gov.uk/choose-a-clinic/

- Fertility Network UK support on infertility and fertility treatment: http://fertilitynetworkuk.org/

- For surrogacy overseas it is sensible to seek advice from a specialist solicitor to understand your options and the law. The Foreign & Commonwealth Office (FCO) has provided guidance on bringing a baby born through surrogacy overseas back to the UK. https://www.gov.uk/government/publications/surrogacy-overseas