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# Myerson **Family**

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## **Our Guide to International Surrogacy**

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# Welcome

We understand the complexities of modern life and, therefore, everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way. It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser.

## Why Myerson?

Our highly experienced and discreet family lawyers, provide clear and supportive legal advice, tailored towards your individual family needs.

As a Top 200 UK Law Firm, we are also proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Family Team** by clicking [here](#).



# International Surrogacy

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International surrogacy involves intended parents who reside in the UK entering into a surrogacy arrangement with a surrogate in another country.

Surrogacy arrangements are not enforceable under UK law and intended parents must follow UK law to obtain legal parenthood for the child. However, intended parents must bear in mind that surrogacy arrangements may be enforceable in the country they have undertaken the surrogacy and they may be subject to the laws of that country. As such, intended parents will need legal advice both in that country and in the UK.

## Surrogacy and Parental Rights in UK Law

In the UK, it is only UK law that determines legal parenthood. As such, neither a birth certificate nor a court order from a foreign jurisdiction will have any impact on determining legal parenthood in the UK.

The woman who gives birth is the legal mother of the child, regardless of genetics or any foreign legalities. If the surrogate is married, her spouse will usually be the second legal parent.

For that reason, after birth, the intended parents will need to make a special court application to obtain parental rights, known as an application for a Parental Order. This will transfer legal parenthood and parental responsibility from the surrogate (and her husband, if she is married) to the intended parents.

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.



# Nationality and Citizenship

The child's nationality will depend on their legal parenthood at birth. There are various options for the acquisition of citizenship, which may well be automatic. Every case is different and turns on its own facts.

At Myerson, we have connections to a network of highly experienced immigration experts to ensure that you are provided with timely and appropriate advice.

For children to be able to travel to the UK, they need either a UK passport or entry clearance for the UK.

Acquiring citizenship and travel documents can take several months, and the intended parents must be prepared to stay with the child in the country where the surrogacy took place until such a time as they are able to travel home with their child. The surrogacy agency should support the intended parents during this time.

## How to apply for a Parental Order after international surrogacy

To make an application for a Parental Order, a number of conditions must be met. Surrogacy agencies dealing with British intended parents must be aware of these conditions and provide all the documentation necessary to meet them.

Applications can be made by anyone over 18 and in an “enduring family relationship”, married, in a civil partnership or unmarried. Single parents can also apply for Parental Orders. Parental Orders can be made in favour of opposite-sex and same-sex couples.

The application should be made within six months of the child being born and:

- The surrogate (and her husband, if relevant) must freely consent to the transfer of legal parenthood not earlier than 6 weeks after the birth and this consent must be confirmed again in court proceedings. The consent of the surrogate (and her husband, if relevant) should be confirmed by using form A101;



- At least one of the intended parents has a genetic relationship to the child;
- At least one of the intended parents must be domiciled in the UK;
- The child must be living with the intended parent(s) in the UK at the time of the application. As such, it is essential that the surrogacy agency provides the necessary support and documentation for the intended parents to be able to obtain/claim British nationality and to apply for travel documents to enable them to return to the UK with their child.

The UK court will need to send to the surrogate (and her husband, if relevant) all papers of the court proceedings transferring parenthood. Therefore, the intended parents must give notice to the surrogate (and her husband, if relevant) of the application for the Parental Order. This should be confirmed by completing of Form C52.

There is no need for the surrogate to participate in the court proceedings, but there must be an acknowledgement that the papers have been received and a confirmation that she (and her husband, if relevant) do not wish to participate in the court proceedings or challenge the transfer of parenthood to the intended parents.

The surrogate must be directly contactable throughout court proceedings. For this purpose, the intended parents will need the home address of the surrogate. It is not enough to provide the address of the surrogacy agency and could prevent a Parental Order being made.

Once you have made an application for a Parental Order, a Parental Order Reporter will be appointed by the Court. They will assist the Court in deciding whether a parental order is in the child's best interests.



# What will the Parental Order Reporter consider?

The child's welfare will be the Court's paramount consideration when deciding whether to make a parental order. Consideration is given to the welfare of the child and in particular, the 'welfare checklist', including, non-exhaustively:

- The needs of the child;
- Any possible risk of harm to the child;
- The relationship the child may have with any relatives; and
- The child's background and whether they will grow up with a knowledge of their origins.

The Parental Order Reporter will need to establish that the surrogate (and her husband, if relevant) consent to the making of the parental order. The Parental Order Reporter may also carry out background checks with the local authority and the police to see if there is any information held that would be relevant to the child's safety.

The Parental Order Reporter will prepare a report for the Court to recommend whether a Parental Order should be made. On the guidance of the Parental Order Reporter and on consideration of the international complexities which will vary from case to case, the court can make a Parental Order transferring legal parenthood to the intended parents.





# A note on payments to surrogacy agencies

UK law does not permit surrogacy agencies to work within the UK on a commercial basis, including negotiating a surrogacy on a commercial basis. However, this does not make such commercial arrangements in other countries illegal and does not apply to agencies when operating outside of the UK.

In order to transfer parenthood to the intended parents, the court will need to authorise any money that has been given or received in relation to the arrangement. All payments made to the surrogate and the surrogacy agency must be documented in detail. Surrogacy agencies must provide intended parents with a detailed and itemised invoice, which sets out the sums paid in relation to the surrogacy arrangement, especially sums received by the surrogate.

The courts have consistently approved payments made to foreign surrogates and surrogacy agencies.

## When should I contact a solicitor?

Ideally, you would contact a solicitor at the start of your surrogacy journey. If you are already in the midst of the surrogacy process, we would recommend you take legal advice at the earliest possible convenience.

## Why Myerson?

Surrogacy and in particular, international surrogacy, is a specialist area of law. It is therefore important to seek legal advice at the first opportunity from a family solicitor who is experienced in this field of practice.

The family team at Myerson, renowned for their knowledge and solution-focused advice, include specialist surrogacy experts who will be able to provide strategic and timely assistance. The team regularly work with both intended parents and fertility clinics and provide timely advice as to their legal obligations. They offer services for Intended Parents throughout England and Wales from their offices in Greater Manchester.



# Meet the Team

**Myerson's sector-leading surrogacy offering is guided by Jane Tenquist and Nichola Bright.**



Jane is the Head of the Family Team and is noted for her approach to client work which is noted for its care and attention to detail. Notably, Jane successfully acted in the reported case of *A and Others v HFEA* [2015] EWHC 2602 (Fam) acting for Manchester Fertility Clinic. This case was highly publicised and was adjudicated by the President of the Family Division.

Nichola is a Partner in the Family Team and is recognised as a “notable expert on fertility and surrogacy issues” (Legal 500). Nichola’s thought leadership is regularly featured in legal press and she is a member of the UK & Ireland LGBT+ Family Institute and Vice Chair of the UK200 Family Group.



***Should you have any questions, please do not hesitate to contact the family team on 0161 941 4000 or by email at [lawyers@myerson.co.uk](mailto:lawyers@myerson.co.uk)***





# You're in safe hands!

If you would like further information about how we can help you with **International Surrogacy**, or if you have any questions, please don't hesitate to contact a member of our **Family Law Team** today.

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Call: 0161 941 4000

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