**Response of the Government of the United Kingdom of Great Britain and Northern Ireland to the request for information from the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material for contributions to her report on Safeguards for the protection of the rights of children born from surrogacy arrangements**

*Note: The Scotland Act 1998, the Northern Ireland Act 1998, and the Government of Wales Act 1998 (which was later effectively superseded by the Government of Wales Act 2006) established the three devolved legislatures and transferred to them some powers that were previously held at Westminster. Further powers have been devolved since these original acts, most recently through the Scotland Act 2016 and Wales Act 2017.*

Surrogacy is legal in the United Kingdom and the UK Government supports surrogacy as part of a range of assisted conception options. It is increasingly becoming an option for starting a family for people who are unable to conceive a child themselves.

For lesbian, gay, bisexual and transgender (LGBT) people, surrogacy can be an option for becoming a parent. This Government has a proud record in advancing equality for LGBT people. We changed the law to allow same-sex couples to marry, and in 2018, we introduced the LGBT Action Plan[[1]](#footnote-1) which contains 75 comprehensive commitments to improve the lives of LGBT people across a number of important areas: education, workplace, safety and healthcare. The UK has consistently been recognised as one of the best countries for LGBT rights in Europe. This Government is committed to the advancement of equality of LGBT people and this includes enabling them to become parents.

Questions in relation to UK policy and legislation on surrogacy are answered below. For information about UK implementation of the CRC, the UK’s most recent report to the UN is available here:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/044/91/PDF/G1504491.pdf?OpenElement>

**Identity, origins and parentage**

1. ***Describe safeguards protecting identity rights (CRC art. 7 and 8) that are currently being implemented in your State. Safeguards include laws, judicial and administrative procedures, enforcement actions, and other practices intended to prevent or remedy violations of human rights norm. Note whether and how such general safeguards protecting identity rights apply in the context of surrogacy arrangements.***
2. ***Describe safeguards protecting the access to origins (CRC art. 7 and 8) that are currently being implemented in your State. Note whether and how such general safeguards protecting the access to origins apply in the context of surrogacy arrangements.***
3. ***Describe how the right to access origins is balanced with the right to privacy of parents and gamete donors. Indicate specifically how the best interests of the child are factored in.***
4. ***Describe safeguards protecting the family environment (CRC art. 7, 8, 9, 10, 20) that are currently being implemented in your State. Note whether and how such general safeguards protecting the family environment apply in the context of surrogacy arrangements. Indicate specifically how the best interested of the child are factored in.***
5. ***Provide information on existing laws, regulations or practices for the establishment, recognition and contestation of legal parentage. Indicate specifically how the best interests of the child are factored in.***
6. ***Specify how the establishment of parentage occurs in the context of surrogacy arrangements. Indicate specifically how the best interests of the child are factored in.***

The Human Fertilisation and Embryology Act 2008[[2]](#footnote-2) provides for the transfer of legal parenthood from the surrogate to the intended parents after a surrogacy arrangement. This is achieved through a `parental order’, which is a replacement for the original birth certificate. The child can apply for a copy of their original birth certificate at age 18. When granting a parental order, the Family Court makes an assessment of criteria set out in the legislation, with an overarching assessment of the best interests of the child. Couples and/or individuals can apply for a parental order, provided at least one of them is genetically related to the child.

Where there is a dispute between parties in a surrogacy arrangement (which is very rare), the Family Court will make a decision about custody and parental responsibility based on the best interests of the child, under the Children Act 2004.[[3]](#footnote-3)

Where a gamete donor has been used in a surrogacy arrangement, the legislation also provides for identifying information about the donor to be made available to the child at age 18 (and non-identifying information at age 16), by the Human Fertilisation & Embryology Authority (HFEA),[[4]](#footnote-4) the UK’s fertility regulator. The HFEA offers counselling and support services for donor-conceived children embarking on a search for their genetic origins, recognising the difficult and complex emotions that may be experienced. Contact with the donor can be facilitated by the HFEA but there is no obligation for the donor to respond. Donors receive implications counselling as part of the donation process, so they are aware that any children born as a result of the donation may in future seek them out.

UK surrogacy organisations promote close, ongoing relationships between surrogates and intending parents and openness with children about the circumstances of their conception and birth.

**Sale of Children**

1. ***Provide information on the laws prohibiting the sale and trafficking of children as well as corresponding implementation measures. Note whether and how such general safeguards against the sale and trafficking of children apply in the context of surrogacy arrangements.***
2. ***Describe any safeguards against the sale of children and child trafficking specifically created for surrogacy arrangements.***
3. ***Comment on the adequacy of current safeguards against the sale of children and child trafficking in the context of surrogacy arrangements.***
4. ***Note situations and provide data, if any, where a lack of safeguards have allowed or unduly risked violations of these norms in the context of surrogacy arrangements.***
5. ***Note the number and types of cases where safeguards against the sale of children have been used in criminal cases in the context of surrogacy arrangements.***

The UK was the first country in the world to have dedicated legislation in place to tackle modern slavery, which covers the offences of slavery, servitude and forced or compulsory labour and human trafficking, for both adults and minors. The Government has had in place since 2014 an ambitious Modern Slavery Strategy, which also covers child trafficking.

The Modern Slavery Act 2015[[5]](#footnote-5) gives law enforcement agencies the tools to tackle modern slavery, including a maximum life sentences for perpetrators and enhanced protection for victims. We are beginning to see the results of this improved law enforcement response. The number of live police operations has increased since the Act became law, from 188 police operations in December 2016 to over 1,370 at present.

The UK recognises the particular vulnerabilities of child victims of modern slavery, including their vulnerability to trafficking. This group of children are entitled to support and assistance, which is tailored to address their specific needs. The Government has announced an ambitious package of reforms to the National Referral Mechanism. This included introducing Independent Child Trafficking Advocates (ICTAs), who can act as an independent source of advice for trafficked children and can speak up on their behalf.

The Government has reaffirmed its commitment to rolling out the ICTA system nationally. To ensure the correct ICTA model is rolled out, a staggered approach has been adopted with built-in assessments along the way. Currently the availability of ICTAs has been expanded to one-third of local authorities in England and Wales. Scotland and Northern Ireland have very similar comprehensive legislation and approaches to combat child trafficking.

As set out above, surrogacy is legal in the UK, although surrogacy arrangements are not enforceable in law. Surrogacy is currently governed by the Surrogacy Arrangements Act 1985.[[6]](#footnote-6) This Act provides that it is an offence to advertise either for a surrogate or as a potential surrogate looking for intended parents. It is a criminal offence under that Act to arrange or negotiate a surrogacy arrangement as a commercial enterprise. Third-party, non-profit (or ‘altruistic’) organisations are allowed and can lawfully assist potential surrogates and intended parents to navigate their surrogacy.

The Government is not aware of any prosecutions under this legislation, nor of any cases of `forced’ surrogacy or `baby-buying’ in the UK.

The UK Government supports surrogacy as part of the range of assisted conception options for family-formation and in 2018 published on-line guidance to clarify the pathway for surrogacy for surrogates and intended parents, which includes LGBT families.[[7]](#footnote-7)

While already robust, the Government recognised that the legislative framework needed review. As such, the Law Commissions of England & Wales and Scotland have very recently completed a comprehensive review of all aspects of surrogacy legislation. This public consultation was published 6 June 2019, making proposals for change.[[8]](#footnote-8)

**Data**

1. ***Indicate if surrogacy arrangements are legal in your State and if so how many occur every year.***
2. ***For countries where surrogacy is permitted, please indicate the number of cases, if any, of contract breaches or of refusal to transfer the child.***
3. ***Indicate if intermediaries facilitating surrogacy arrangements must be registers and, if so, how many are registered in your State.***
4. ***For countries where surrogacy is prohibited, please indicated the number of cases, on an annual basis, where national have made a surrogacy arrangement abroad and have returned to their country of origin with the surrogate-born child.***
5. ***Following on the previous question, please indicate under which circumstances authorities have allowed their nationals to bring the child born from surrogacy arrangement back into their country of origin and if so please indicate which ones (e.g. domestic parenting orders, judgements, best interests of the child determinations, etc.), and how often they have been used.***
6. ***Lastly, in the same context, please indicate how many cases have led to the non-recognition of parentage orders established in the State where the surrogacy arrangement occurred.***

Records are not kept of all surrogacy arrangements in the UK because not all follow the same pathway. Data is collected on the number of parental order applications made each year in England and Wales, as set out in the table below (published by the Ministry of Justice as part of Family Court Statistics).[[9]](#footnote-9) This acts as an indicator of trends, but does not capture all surrogacies because, firstly, not all UK surrogacies will result in a parental order and, secondly, UK residents who undertake a surrogacy arrangement outside the UK are also eligible to apply for a parental order.

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| --- | --- |
| **Year** | **Number of parental orders made in England and Wales** |
| 2011 | 121 |
| 2012 | 190 |
| 2013 | 162 |
| 2014 | 243 |
| 2015 | 331 |
| 2016 | 407 |
| 2017 | 332 |
| 2018 (first six months only) | 176 |

We are aware of only two cases in the last five years where a surrogacy arrangement has broken down and the Family Court has intervened to decide on custody and parental responsibility.

As above, surrogacy organisations must not be run for profit and therefore they must be registered and accountable as a charity.

10 June 2019

1. <https://www.gov.uk/government/publications/lgbt-action-plan-2018-improving-the-lives-of-lesbian-gay-bisexual-and-transgender-people> [↑](#footnote-ref-1)
2. <https://www.legislation.gov.uk/ukpga/2008/22/contents> [↑](#footnote-ref-2)
3. <https://www.legislation.gov.uk/ukpga/2004/31/contents> [↑](#footnote-ref-3)
4. <https://www.hfea.gov.uk/> [↑](#footnote-ref-4)
5. <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted> [↑](#footnote-ref-5)
6. <https://www.legislation.gov.uk/ukpga/1985/49> [↑](#footnote-ref-6)
7. <https://www.gov.uk/government/publications/having-a-child-through-surrogacy> [↑](#footnote-ref-7)
8. <https://consult.justice.gov.uk/law-commission/surrogacy/> [↑](#footnote-ref-8)
9. <https://www.gov.uk/government/collections/family-court-statistics-quarterly> [↑](#footnote-ref-9)