

Surrogacy Policy Brief

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International Surrogacy and UK Reform Proposals Addressing the Cross-Border Dimension

INTRODUCTION

Current debates on surrogacy reform, including the [forthcoming parliamentary debate](#), rightly focus on securing legal parenthood for intended parents from birth. This briefing strongly endorses that aim and the [Law Commissions' proposed 'new pathway'](#) for domestic surrogacy, which would remove the need for intended parents who follow the new regulatory route to apply after birth for a parental order, the court order currently used to transfer legal parenthood from the surrogate (and any other legal parent) to the intended parents. This would not apply to international surrogacy.

Domestic reform alone, however, will not prevent children born through international surrogacy from facing fragmented nationality, passport, immigration and legal parenthood processes. These cross-border hurdles arise before a parental order can be made, may engage multiple jurisdictions and can leave children's legal status precarious.

This briefing argues that recognition from birth and a clearer international surrogacy pathway should be treated as complementary parts of a coherent reform agenda. The briefing does not seek to displace domestic reform, but to ensure that children born through international surrogacy are not left unprotected while their parents navigate fragmented systems.

UNADDRESSED PROBLEMS

International surrogacy raises two connected challenges. First, intended parents may enter overseas arrangements without a clear understanding of how local rules and practices on consent, parenthood, clinic records, payments, surrogate marital status, nationality/citizenship and birth registration will be assessed in UK processes. Where safeguards or documentation are weak, this can raise concerns about exploitation, missing records and the child's legal status.

Second, once a child is born, the case may move through separate nationality, passport, entry clearance and family court routes. These routes apply different legal tests but often depend on the same underlying facts and documents. The result is a system that may fail at both stages: it does too little to make risks visible before arrangements are initiated, while also creating delay, duplication, inconsistent messaging and uncertainty after the child is born.

Summary

- **Support recognition from birth.** Intended parents should be legal parents from birth, as this reflects the care and responsibility they provide from the child's first moments.
- **Do not overlook the international dimension.** Children born overseas may still face nationality, passport, entry clearance, consular and recognition questions before their status is secure.
- **Turn guidance into a clearer pathway.** Existing Foreign, Commonwealth & Development Office (FCDO)-led guidance should be made more operational, with clearer sequencing, signposting and escalation routes.
- **Keep reform practical.** Immediate improvements could include strengthened FCDO-led guidance, risk indicators, shared evidence checklists, early case identification, trained caseworkers and nominated contacts.
- **Protect safeguards and accountability.** Reform should preserve safeguards around child welfare, surrogate consent, exploitation and public policy, while ensuring that concerns about adult conduct do not leave children in legal limbo.

ABOUT THIS BRIEFING

This briefing draws on Dr Marianna Iliadou's research on international surrogacy and was informed by a non-attributable policy and stakeholder roundtable convened in July 2026, and by background discussion with staff from the Migration, Borders and International Policy and Programmes Team at the Home Office. The roundtable was supported by funding from the University of Sussex. I am grateful to the Home Office staff with whom I spoke, and to all roundtable participants for their time and insights, including Melissa Elsworth, Shaili Gohil-Desai, Karma Hickman, Professor Nick Hopkins, Professor Kirsty Horsey, Dr Zaina Mahmoud and Andrew Spearman, who agreed to be named in connection with the event. I am also grateful to 1GC|Family Law for hosting the roundtable, and to Professor Kirsty Horsey for her support in helping to bring it together. The analysis and recommendations are my own and should not be attributed to any individual participant, department or organisation.

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A CLEARER PATHWAY

A clearer pathway does not amount to automatic approval of international surrogacy arrangements or removal of judicial scrutiny. Its purpose is to make the journey clearer, safer and more coordinated by improving sequencing, evidence gathering, institutional responsibility and escalation routes, while preserving safeguards around child welfare, surrogate consent, identity, exploitation risk and public policy. The recommendations below focus on practical and immediate reforms, many of which could be developed without primary legislation. They should sit alongside, not replace, legislative reform. This includes support for the [Law Commissions' proposals](#) to:

- (i) recognise intended parents as legal parents from birth within the regulated domestic 'new pathway';
- (ii) amend section 50(9A) of the British Nationality Act 1981 so that a surrogate's spouse/civil partner is not treated as the child's father/second legal parent for nationality purposes in surrogacy cases; and
- (iii) clarify the role of regulated legal professionals in providing specialist independent advice on surrogacy arrangements, without making such arrangements enforceable or turning advice into approval of the arrangement.

These reforms would help align parenthood, nationality and professional advice, while the recommendations below address the operational gaps that continue to arise in international surrogacy cases.

RECOMMENDATIONS FOR A CLEARER CROSS-BORDER PATHWAY

Action 1. Strengthen FCDO-led guidance

FCDO should remain the front door for international surrogacy guidance, building on its [existing guidance for intended parents](#). However, the guidance should be strengthened by becoming more operational, with periodic input from the Ministry of Justice (MoJ), Department of Health and Social Care (DHSC), Home Office, HM Passport Office (HMPO) and UK Visas and Immigration (UKVI). This is necessary because international surrogacy cuts across family law, nationality law, passports, immigration and consular practice.

Through this interdepartmental review process, the strengthened guidance should explain the sequence of steps, responsible authorities, key decision points and points at which specialist legal advice should be sought. It should also include an accessible visual pathway map, signpost intended parents to the risk indicators discussed below and, separately, link to a shared evidence checklist discussed under Action 3. The guidance should be reviewed regularly so that it remains aligned with case law, overseas practice and passport, nationality and immigration procedures, as detailed under Action 5.

Action 2. Use risk indicators

Guidance should identify the types of overseas arrangement likely to create difficulty for the child's route home and later legal parenthood, including issues around consent, clinic records, surrogate marital status, birth registration, proof of genetic link, nationality and travel documentation.

This should not take the form of a blacklist, approval list or traffic-light ranking of countries. A more workable approach would be for the strengthened FCDO-led guidance to set out risk indicators, particular-

ly features of an arrangement that should prompt intended parents to pause and seek specialist advice before an arrangement is made, before birth or before leaving the overseas jurisdiction. Examples drawn from case law could show how difficulties arise when foreign documents, clinic records or parenthood determinations do not map neatly onto UK nationality, passport or parental order requirements. The purpose is to make risks visible before arrangements are made, without penalising children.

Action 3. Create a shared evidence checklist

International surrogacy cases often require the same facts to be evidenced repeatedly for different legal purposes across nationality, passport, entry clearance and parental order processes, each authority applying a different legal test. Relevant evidence may include birth registration documents, foreign court orders, clinic letters, consent documents, evidence of the surrogate's marital status, proof of gamete use, DNA evidence and information about payments and records.

Home Office nationality teams, HMPO and UKVI, in consultation with family justice actors, should develop a shared evidence checklist for international surrogacy cases. This would not require a single legal test or remove case-by-case assessment. Its purpose would be to reduce avoidable duplication, make document requests more predictable, limit ad hoc or inconsistent requests for further evidence and help intended parents gather key evidence before birth or before leaving the overseas jurisdiction.

Action 4. Identify cases early and route them to trained contacts

A new specialist surrogacy unit may not be realistic or necessary. A more proportionate action would be to ensure that international surrogacy cases are identified early within existing nationality, passport and immigration systems.

HMPO, UKVI and relevant Home Office casework systems should explore an early case marker for international surrogacy, triggered where the application, supporting documents or consular enquiry indicates that the child was born overseas through surrogacy, or that parenthood, nationality or travel documentation turns on that arrangement. Cases could then be referred via

clear escalation routes (i.e., referral processes for cases requiring specialist or cross-departmental handling) to trained caseworkers or nominated contacts where nationality, passport, entry clearance or consular issues overlap.

This would not change the legal tests or amount to approval of the arrangement. Rather, it would ensure that, within each relevant system, international surrogacy cases can be identified early and referred to an appropriate trained contact, so that evidence requests, referrals and overlapping issues are not handled in isolation.

Action 5. Build in safeguards, accountability and review

Guidance should not operate as a bar to the child's route home or to securing legal parenthood, but it should not be merely informational either. Where risk indicators are present, or where intended parents have proceeded despite clear warnings, this should trigger enhanced scrutiny within existing decision-making processes.

Enhanced scrutiny should include targeted evidence requests and a requirement to explain how identified risks were addressed. Where concerns about consent, clinic records, genetic link, payments, exploitation, safeguarding or public policy remain unresolved, the case should be capable of referral for specialist input, including safeguarding, social work or family court involvement where appropriate. Serious in-

dependent concerns should be addressed through existing safeguarding or criminal law routes, without leaving the child's welfare, nationality, travel documentation or legal parenthood unresolved. These safeguards should sit alongside legislative reform on parenthood, nationality and immigration.

The strengthened guidance, risk indicators and evidence checklist should also be reviewed periodically through the same cross-government process. Review should draw on casework patterns, recurring evidence problems, changes in overseas law and practice, relevant case law, and feedback from families, practitioners and support organisations, so that the framework remains responsive to changing experiences and needs.

For wider parliamentary and sector context, see the Parliamentary Office of Science and Technology POSTnote '[Surrogacy in the UK](#)' and the British Fertility Society '[Briefing Paper: Surrogacy Law Reform](#)'.