



# Surrogacy Arrangements Act 1985

## 1985 CHAPTER 49

### 2 Negotiating surrogacy arrangements on a commercial basis, etc.

(1) No person shall on a commercial basis do any of the following acts in the United Kingdom, that is—

(a) initiate <sup>F1</sup>... any negotiations with a view to the making of a surrogacy arrangement,

[<sup>F2</sup>(aa) take part in any negotiations with a view to the making of a surrogacy arrangement,]

(b) offer or agree to negotiate the making of a surrogacy arrangement, or

(c) compile any information with a view to its use in making, or negotiating the making of, surrogacy arrangements;

and no person shall in the United Kingdom knowingly cause another to do any of those acts on a commercial basis.

(2) A person who contravenes subsection (1) above is guilty of an offence; but it is not a contravention of that subsection—

(a) for a woman, with a view to becoming a surrogate mother herself, to do any act mentioned in that subsection or to cause such an act to be done, or

(b) for any person, with a view to a surrogate mother carrying a child for him, to do such an act or to cause such an act to be done.

[<sup>F3</sup>(2A) A non-profit making body does not contravene subsection (1) merely because—

(a) the body does an act falling within subsection (1)(a) or (c) in respect of which any reasonable payment is at any time received by it or another, or

(b) it does an act falling within subsection (1)(a) or (c) with a view to any reasonable payment being received by it or another in respect of facilitating the making of any surrogacy arrangement.

(2B) A person who knowingly causes a non-profit making body to do an act falling within subsection (1)(a) or (c) does not contravene subsection (1) merely because—

(a) any reasonable payment is at any time received by the body or another in respect of the body doing the act, or

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- (b) the body does the act with a view to any reasonable payment being received by it or another person in respect of the body facilitating the making of any surrogacy arrangement.
- (2C) Any reference in subsection (2A) or (2B) to a reasonable payment in respect of the doing of an act by a non-profit making body is a reference to a payment not exceeding the body's costs reasonably attributable to the doing of the act.]
- (3) For the purposes of this section, a person does an act on a commercial basis (subject to subsection (4) below) if—
- (a) any payment is at any time received by himself or another in respect of it, or
  - (b) he does it with a view to any payment being received by himself or another in respect of making, or negotiating or facilitating the making of, any surrogacy arrangement.

In this subsection “payment” does not include payment to or for the benefit of a surrogate mother or prospective surrogate mother.

- (4) In proceedings against a person for an offence under subsection (1) above, he is not to be treated as doing an act on a commercial basis by reason of any payment received by another in respect of the act if it is proved that—
- (a) in a case where the payment was received before he did the act, he did not do the act knowing or having reasonable cause to suspect that any payment had been received in respect of the act; and
  - (b) in any other case, he did not do the act with a view to any payment being received in respect of it.
- (5) Where—
- (a) a person acting on behalf of a body of persons takes any part in negotiating or facilitating the making of a surrogacy arrangement in the United Kingdom, and
  - (b) negotiating or facilitating the making of surrogacy arrangements is an activity of the body,

then, if the body at any time receives any payment made by or on behalf of—

- (i) a woman who carries a child in pursuance of the arrangement,
  - (ii) the person or persons for whom she carries it, or
  - (iii) any person connected with the woman or with that person or those persons,
- the body is guilty of an offence.

For the purposes of this subsection, a payment received by a person connected with a body is to be treated as received by the body.

[<sup>F4</sup>(5A) A non-profit making body is not guilty of an offence under subsection (5), in respect of the receipt of any payment described in that subsection, merely because a person acting on behalf of the body takes part in facilitating the making of a surrogacy arrangement.]

- (6) In proceedings against a body for an offence under subsection (5) above, it is a defence to prove that the payment concerned was not made in respect of the arrangement mentioned in paragraph (a) of that subsection.
- (7) A person who in the United Kingdom takes part in the management or control—
- (a) of any body of persons, or
  - (b) of any of the activities of any body of persons,

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is guilty of an offence if the activity described in subsection (8) below is an activity of the body concerned.

- (8) The activity referred to in subsection (7) above is negotiating or facilitating the making of surrogacy arrangements in the United Kingdom, being—
- (a) arrangements the making of which is negotiated or facilitated on a commercial basis, or
  - (b) arrangements in the case of which payments are received (or treated for the purposes of subsection (5) above as received) by the body concerned in contravention of subsection (5) above.

[<sup>F5</sup>(8A) A person is not guilty of an offence under subsection (7) if—

- (a) the body of persons referred to in that subsection is a non-profit making body, and
- (b) the only activity of that body which falls within subsection (8) is facilitating the making of surrogacy arrangements in the United Kingdom.

(8B) In subsection (8A)(b) “ facilitating the making of surrogacy arrangements ” is to be construed in accordance with subsection (8). ]

- (9) In proceedings against a person for an offence under subsection (7) above, it is a defence to prove that he neither knew nor had reasonable cause to suspect that the activity described in subsection (8) above was an activity of the body concerned; and for the purposes of such proceedings any arrangement falling within subsection (8)(b) above shall be disregarded if it is proved that the payment concerned was not made in respect of the arrangement.

#### Textual Amendments

- F1** Words in s. 2(1)(a) omitted (1.10.2009) by virtue of [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), ss. 59(3)(a), 68(2), **Sch. 8 Pt. 1**; S.I. 2009/2232, art. 2(r)
- F2** S. 2(1)(aa) inserted (1.10.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), **ss. 59(3)(b)**, 68(2); S.I. 2009/2232, art. 2(r)
- F3** S. 2(2A)-(2C) inserted (1.10.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), **ss. 59(4)**, 68(2); S.I. 2009/2232, art. 2(r)
- F4** S. 2(5A) inserted (1.10.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), **ss. 59(5)**, 68(2); S.I. 2009/2232, art. 2(r)
- F5** S. 2(8A)(8B) inserted (1.10.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), **ss. 59(6)**, 68(2); S.I. 2009/2232, art. 2(r)

**Changes to legislation:**

There are currently no known outstanding effects for the Surrogacy Arrangements Act 1985, Section 2.