



# Surrogacy Arrangements Act 1985

## 1985 CHAPTER 49

An Act to regulate certain activities in connection with arrangements made with a view to women carrying children as surrogate mothers. [16th July 1985]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Commencement Information

II Act wholly in force at Royal Assent

## 1 **Meaning of “surrogate mother”, “surrogacy arrangement” and other terms.** **E** **+W+N.I.**

- (1) The following provisions shall have effect for the interpretation of this Act.
- (2) “Surrogate mother” means a woman who carries a child in pursuance of an arrangement—
  - (a) made before she began to carry the child, and
  - (b) made with a view to any child carried in pursuance of it being handed over to, and [<sup>F1</sup>parental responsibility being met] (so far as practicable) by, another person or other persons.
- (3) An arrangement is a surrogacy arrangement if, were a woman to whom the arrangement relates to carry a child in pursuance of it, she would be a surrogate mother.
- (4) In determining whether an arrangement is made with such a view as is mentioned in subsection (2) above regard may be had to the circumstances as a whole (and, in particular, where there is a promise or understanding that any payment will or may be made to the woman or for her benefit in respect of the carrying of any child in pursuance of the arrangement, to that promise or understanding).

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- (5) An arrangement may be regarded as made with such a view though subject to conditions relating to the handing over of any child.
- (6) A woman who carries a child is to be treated for the purposes of subsection (2)(a) above as beginning to carry it at the time of the insemination [<sup>F2</sup>or of the placing in her of an embryo, of an egg in the process of fertilisation or of sperm and eggs, as the case may be,] that results in her carrying the child.
- (7) “Body of persons” means a body of persons corporate or unincorporate.
- [<sup>F3</sup>(7A) “Non-profit making body” means a body of persons whose activities are not carried on for profit.]
- (8) “Payment” means payment in money or money’s worth.
- (9) This Act applies to arrangements whether or not they are lawful . . . <sup>F4</sup>.

#### Extent Information

- E1** This version extends to England and Wales and Northern Ireland only; a separate version has been created for Scotland only

#### Textual Amendments

- F1** Words in s. 1(2)(b) substituted (E.W.) (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para. 56](#) (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, [art. 3\(2\)](#) and substituted (N.I.) (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(1), [Sch. 9 para. 119](#); S.R. 1996/297, [art. 2\(2\)](#)
- F2** Words substituted by [Human Fertilisation and Embryology Act 1990 \(c. 37, SIF 83:1\)](#), s. [36\(2\)\(a\)](#)
- F3** [S. 1\(7A\)](#) inserted (1.10.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), [ss. 59\(2\)](#), [68\(2\)](#); S.I. 2009/2232, art. 2(r)
- F4** Words repealed by [Human Fertilisation and Embryology Act 1990 \(c. 37, SIF 83:1\)](#), s. [36\(2\)\(b\)](#)

## 1 Meaning of “surrogate mother”, “surrogacy arrangement” and other terms. **S**

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- (5) An arrangement may be regarded as made with such a view though subject to conditions relating to the handing over of any child.

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(6) A woman who carries a child is to be treated for the purposes of subsection (2)(a) above as beginning to carry it at the time of the insemination [<sup>F16</sup>or of the placing in her of an embryo, of an egg in the process of fertilisation or of sperm and eggs, as the case may be,] that results in her carrying the child.

(7) “Body of persons” means a body of persons corporate or unincorporate.

[<sup>F3</sup>(7A) “Non-profit making body” means a body of persons whose activities are not carried on for profit.]

(8) “Payment” means payment in money or money’s worth.

(9) This Act applies to arrangements whether or not they are lawful . . . <sup>F17</sup>.

#### Extent Information

**E2** This version extends to Scotland only; a separate version has been created for England and Wales and Northern Ireland only

#### Textual Amendments

**F3** S. 1(7A) inserted (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 59(2), 68(2); S.I. 2009/2232, art. 2(r)

**F16** Words substituted by Human Fertilisation and Embryology Act 1990 (c. 37, SIF 83:1), s. 36(2)(a)

**F17** Words repealed by Human Fertilisation and Embryology Act 1990 (c. 37, SIF 83:1), s. 36(2)(b)

#### [<sup>F5</sup>1A Surrogacy arrangements unenforceable.

No surrogacy arrangement is enforceable by or against any of the persons making it.]

#### Textual Amendments

**F5** S. 1A inserted by Human Fertilisation and Embryology Act 1990 (c. 37, SIF 83:1), s. 36(1)

## 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>F6</sup>... any negotiations with a view to the making of a surrogacy arrangement,

[<sup>F7</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

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- (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>F8</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
- (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.

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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>F9</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,

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>F10</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

- F6** 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)
- F7** 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)
- F8** 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)
- F9** 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)

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**F10** 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)

### 3 Advertisements about surrogacy.

- (1) This section applies to any advertisement containing an indication (however expressed)—
- (a) that any person is or may be willing to enter into a surrogacy arrangement or to negotiate or facilitate the making of a surrogacy arrangement, or
  - (b) that any person is looking for a woman willing to become a surrogate mother or for persons wanting a woman to carry a child as a surrogate mother.

[<sup>F11</sup>(1A) This section does not apply to any advertisement placed by, or on behalf of, a non-profit making body if the advertisement relates only to the doing by the body of acts that would not contravene section 2(1) even if done on a commercial basis (within the meaning of section 2).]

- (2) Where a newspaper or periodical containing an advertisement to which this section applies is published in the United Kingdom, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.
- (3) Where an advertisement to which this section applies is conveyed by means of [<sup>F12</sup>an electronic communications network] so as to be seen or heard (or both) in the United Kingdom, any person who in the United Kingdom causes it to be so conveyed knowing it to contain such an indication as is mentioned in subsection (1) above is guilty of an offence.
- (4) A person who publishes or causes to be published in the United Kingdom an advertisement to which this section applies (not being an advertisement contained in a newspaper or periodical or conveyed by means of [<sup>F12</sup>an electronic communications network]) is guilty of an offence.
- (5) A person who distributes or causes to be distributed in the United Kingdom an advertisement to which this section applies (not being an advertisement contained in a newspaper or periodical published outside the United Kingdom or an advertisement conveyed by means of [<sup>F12</sup>an electronic communications network]) knowing it to contain such an indication as is mentioned in subsection (1) above is guilty of an offence.

<sup>F13</sup>(6) .....

#### Textual Amendments

- F11** S. 3(1A) inserted (1.10.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), **ss. 59(7)**, **68(2)**; S.I. 2009/2232, art. 2(r)
- F12** Words in s. 3 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 17 para. 77** (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Schs. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- F13** S. 3(6) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Schs. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

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#### 4 Offences.

- (1) A person guilty of an offence under this Act shall be liable on summary conviction—
- (a) in the case of an offence under section 2 to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or both,
  - (b) in the case of an offence under section 3 to a fine not exceeding level 5 on the standard scale.

F14 . . .

- (2) No proceedings for an offence under this Act shall be instituted—
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions; and
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (3) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (4) Where the affairs of a body corporate are managed by its members, subsection (3) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (5) In any proceedings for an offence under section 2 of this Act, proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the management or control of a body of persons or of any of the body, or by a person doing any of the acts mentioned in subsection (1)(a) to (c) of that section on behalf of the body, shall be admissible as evidence of the activities of the body.
- (6) In relation to an offence under this Act, section 127(1) of the Magistrates' Courts Act 1980 (information must be laid within six months of commission of offence), [F15section 136(1) of the Criminal Procedure (Scotland) Act 1995](proceedings must be commenced within that time) and Article 19(1) of the <sup>M1</sup>Magistrates' Courts (Northern Ireland) Order 1981 (complaint must be made within that time) shall have effect as if for the reference to six months there were substituted a reference to two years.

#### Textual Amendments

F14 Words in s. 4(1) repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. XIV

F15 Words in s. 4(6) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 57

#### Marginal Citations

M1 S.I. 1981/1675 (N.I. 26).

#### 5 Short title and extent.

- (1) This Act may be cited as the Surrogacy Arrangements Act 1985.

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(2) This Act extends to Northern Ireland.



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**Changes and effects yet to be applied to :**

- s. 4(1)(a) repealed by [2003 c. 44 Sch. 37 Pt. 9](#)
- s. 4(1)(b) words repealed by [2003 c. 44 Sch. 37 Pt. 9](#)