



Home Office

# Nationality policy: surrogacy

Version 2.0

This guidance tells you about how surrogacy in the UK affects a child's claim to British nationality.

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# About this guidance

This guidance tells Home Office staff about how surrogacy in the UK affects a child's claim to British nationality.

Guidance for British nationals who are considering entering into surrogacy arrangements in foreign countries can be found on the [GOV.UK website](#).

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Nationality policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **2.0**
- published for Home Office staff on **19 March 2019**

## Changes from last version of this guidance

Clarification that DNA evidence cannot be mandated and that no negative inference can be drawn if an applicant chooses not to supply such evidence.

### Related content

[Contents](#)

# Definition of surrogacy

Surrogacy is when a woman carries a child for another woman, following an agreement prior to conception that the child should be handed over to them after the birth.

The woman who carried the child is known as the 'surrogate mother'. The couple who she entered into a surrogacy arrangement with are the 'commissioning couple'.

The surrogate mother may be the genetic mother if her own egg was used to create the embryo. This is known as 'partial' surrogacy. In other cases she may have had a fertilised embryo implanted in her, in which case she will not be genetically related to the child, which is known as 'host' or 'full' surrogacy.

The commissioning couple may both be the genetic parents, or just one, or neither of them may be genetically related to the child. This will depend on the sources of the egg and sperm used to create the embryo. In some instances it may be that both the sperm and the egg were provided by donors, so that the resulting child is not related genetically to either the surrogate mother or the commissioning couple. Where neither of the commissioning couple is genetically related to the child they cannot apply for a parental order.

## The legal parents of a surrogate child

The [Human Fertilisation and Embryology Act 1990](#), and the [Human Fertilisation and Embryology Act 2008](#) set out specific conditions that must be fulfilled for the commissioning couple to apply for a parental order. If these conditions are not met, they cannot apply for a parental order.

The provisions apply regardless of whether the surrogate mother was in the UK or elsewhere when the embryo was placed in her or when she was artificially inseminated but must be considered together with the definitions of 'parent' in the [British Nationality Act 1981](#).

## The legal mother

For the purposes of both the Human Fertilisation and Embryology Acts and the nationality legislation, the surrogate mother is to be treated as the mother of the child.

## The legal father: child born before 1 July 2006

For the purposes of both the Human Fertilisation and Embryology Acts and nationality legislation, the legal father of the child is the husband of the surrogate mother provided he consented to her treatment.

If the surrogate mother was not married when the child was born, or if she was married and her husband did not consent to her treatment, the child has no father for the purposes of nationality legislation.

## The legal father: child born on or after 1 July 2006

The child's father is either:

- the man that the surrogate mother was married to at the time of the birth
- the man with whom the surrogate mother received treatment that was licensed under the Human Fertilisation and Embryology Act 1990 (but not if the creation of the embryo was brought about with the sperm of that man)
- if neither of the above applies, a person who is proved to be the father by the production of either:
  - a birth certificate issued by the relevant authorities of the country where the child was born, within 12 months of the birth which names him as the father
  - other evidence, such as a DNA test report or court order, that satisfies the Secretary of State on this point, see [DNA](#)

## The legal father: child conceived on or after 6 April 2009

The child's father is either:

- the man that the surrogate mother was married to at the time of the birth
- the man with whom the surrogate mother received treatment services, licensed under the Human Fertilisation and Embryology Act to provide such services (but not if the creation of the embryo was brought about with the sperm of that man)
- a person who is treated as a parent of the child under section 42 or 43 of the [Human Fertilisation and Embryology Act 2008](#) (second female parent)
- if none of the above applies, a person who is proved to be the father by the production of either:
  - a birth certificate identifying him as such, and issued by the competent registration authority within 12 months of the birth which names him as the father
  - other evidence, such as a DNA test report or court order, that satisfies the Secretary of State on this point, see [proof of paternity regulations](#)

## British Nationality (Proof of paternity) (Amendment) Regulations 2015

This change was introduced to amend the [British Nationality \(Proof of Paternity\) Regulations 2006](#). The change came into effect on 10 September 2015 and does not affect children where the birth certificate was issued before the 10 September 2015. For births registered before that date a birth certificate issued within 12 months of a child being born is sufficient to establish paternity for the purpose of British nationality applications. Where the birth was registered on or after that date, the birth certificate is just one of the documents that can be used as evidence of paternity. You can therefore discount it if there is other information, such as DNA evidence or a court order, to suggest that another man is in fact the child's natural father. Please see [DNA](#) for more information.

In most circumstances the fact that a father is named on the birth certificate will be sufficient, unless there is any information to suggest that the details on the birth certificate are not true. This might be where the parents were not in the same country at the time of conception, another man claims to be the father, or there is evidence to suggest that the child is not related as claimed to the man named on the birth certificate. You must only accept that the man is the child's father if you are satisfied about paternity on the basis of all the information available.

If the father is married to the child's mother at the time of birth, additional evidence of paternity is not necessary.

## DNA

You must not mandate DNA evidence as this is not a requirement. Applicants can choose to volunteer DNA evidence, either proactively or in response to an invitation to submit further evidence. Where applicants choose not to volunteer DNA evidence, no negative inferences can be drawn from this. See DNA policy guidance for full instructions on the use and consideration of DNA evidence to prove a biological relationship.

## Parental orders

A couple may additionally be treated as the legal parents of the child if a parental order has been made in their favour under [section 54 of the Human Fertilisation and Embryology Act 2008](#). An order made before 6 April 2010 will not have any automatic nationality consequences for the child, but may justify registration under [section 3\(1\) of the British Nationality Act 1981](#). See: Registration as a British citizen: children.

A child who is the subject of a parental order made in a UK court after 6 April 2010 will become a British citizen from the date of the order if either one of the persons who obtained the order is a British citizen.

On an application submitted by 2 people, the court may make an order providing for a child to be treated in law as the child of the applicants if

- the child has been carried by a woman who is not one of the applicants, as a result of the placing in her of an embryo or sperm and eggs by artificial insemination
- the sperm or eggs of at least one of the applicants was used to bring about the creation of the embryo of the applicants

In addition the following conditions must be fulfilled:

- the couple must be husband and wife, civil partners or two people living as partners in an enduring family relationship, and not in prohibited degrees of relationship with each other
- the commissioning couple must apply for a parental order within 6 months of the child being born

- the child must be living with the commissioning couple at the time they apply for the parental order
- the commissioning couple must be residing permanently in the UK, Channel Islands or Isle of Man
- the commissioning couple must both be over 18 at the time the order is made
- the surrogate and her husband (if she has one) must agree freely and unconditionally to the making of the order
- no money, other than reasonable expenses, must have been paid to the surrogate

## Practical considerations

In some countries it is possible to obtain a court order before the child's birth which allows the commissioning couple, rather than the surrogate mother and her partner, to be named as the parents on the child's birth certificate.

Where the child is born on or after 1 July 2006, but before 10 September 2015, the birth certificate (if issued within 12 months of the birth) will constitute conclusive evidence of paternity for nationality purposes irrespective of whether the named father is treated as such by the Human Fertilisation and Embryology Act, unless the surrogate mother is married at the time of the birth. Where the child is born on or after 10 September 2015, a birth certificate is one of the documents that can be taken in to consideration to establish paternity.

Where the child was born before 1 July 2006, neither a foreign court order or the resulting birth certificate affects the legal position in the UK, as described in the paragraphs on legal fathers. These documents may, however, support a registration under [section 3\(1\) of the British Nationality Act 1981](#) where either or both named parents are British citizens and it is clear that the child is to be brought up as part of their family.

## Surrogacy and British citizenship

For nationality purposes:

- the surrogate mother is always the 'mother'
- if the surrogate mother is married, the 'father' is always the mother's husband
- if the surrogate mother is not married, the proof of paternity regulations may apply, such as being named on the birth certificate

## Examples

A child is a British citizen if the:

- commissioning father is a British citizen otherwise than by descent
- surrogate mother is not married
- commissioning father can prove paternity such as by being named on the birth certificate or providing other evidence

A child is not British if the:

- surrogate mother is not a British citizen
- commissioning father is a British citizen otherwise than by descent
- surrogate mother is married to someone who is not a British citizen

A child is not British if the:

- commissioning mother is a British citizen otherwise than by descent
- commissioning father and the surrogate mother are not British citizens otherwise than by descent
- surrogate mother is not married

This is because the surrogate mother is the child's mother for nationality purposes, and so the commissioning mother cannot pass on her status.

The commissioning couple can apply for a parental order.

Information on considering a registration application for a surrogate child can be found in the registration as a British citizen: children guidance.

#### **Related content**

[Contents](#)