

PROGAR'S written submission on the Government's Response to the Report of the Joint Committee on Human Rights on the first Human Fertilisation & Embryology Act 2008 (Remedial) Order 2018 and on the revised Human Fertilisation & Embryology Act 2008 (Remedial) Order 2018.

The British Association of Social Workers (BASW) Project Group on Assisted Reproduction, PROGAR (<https://www.basw.co.uk/progar/>) has since the 1980s campaigned in the UK and overseas on matters concerning assisted reproduction, including surrogacy. We have variously worked in partnership with donor-conceived adults, Barnardo's, Children's Society, Donor Conception Network, British Infertility Counselling Association (BICA), British Association for Adoption and Fostering (BAAF), National Association of Guardians ad Litem and Reporting Officers (NAGALRO), Children and Family Court Advisory and Support Service (CAFCASS), Children and Families Across Borders (CFAB) and UK DonorLink.

1. OVERALL STATEMENT

1.1 PROGAR welcomes the Government's response to the JCHR report on the first Remedial Order laid earlier this year.

1.2 PROGAR supports the decision to use a Remedial Order to seek to extend eligibility to single people to apply for a Parental Order in respect of a child born as a result of surrogacy arrangements to whom they are genetically related.

1.3 Further, PROGAR supports the Government's recognition of the situation that might arise should an adult who is the genetic parent of a surrogate-born child wish to make a sole application for a Parental Order for the reasons set out in 3.7-3.9 of the Government's response. We therefore support the change in the recently laid, revised Remedial Order to enable this to happen in the small number of cases where it might apply. It will, of course, be important to ensure that this does not provide a back door for someone who was not an Intended Parent at the start of the process to acquire legal parenthood status.

2. SPECIFIC COMMENTS ON THE GOVERNMENT RESPONSE TO THE JCHR REPORT

2.1 In point 4 of our response to the first draft RO which we submitted on 18th December 2017 (and which we were surprised not to see appear in the list of submissions) we said the following:

'We believe the section which we have underlined below in the statement which appears at 2.2 in the Government Response to be potentially misleading: 'Surrogacy has an important role to play in our society, helping to create much-wanted families where that might otherwise not be possible. It enables relatives and friends to provide an altruistic gift to people who aren't able to have a child themselves, and can help people to have their own genetically-related children'. To our knowledge, there are no robust data collected by any of the agencies involved to support such a statement. Indeed from our own practice and research experience, we know that many surrogacy arrangements involve people coming together for the specific purpose of entering into a surrogacy arrangement. To imply, as this does, that surrogates are [only] relatives and friends misses out a significant aspect of surrogacy arrangements.'

2.2 We are concerned to see that the Government response to the JCHR Report makes exactly the same claim in 1.2. We repeat that we are not aware of any data either from the agencies involved or from research to say that the majority of surrogates are relatives and friends of the Intended Parents and that our own practice and research experience is that many surrogacy arrangements involve people coming together for the specific purpose of entering into a surrogacy arrangement. We concluded last time that 'To imply, as this does, that surrogates are [only] relatives and friends misses out a significant aspect of surrogacy arrangements'.

3 SPECIFIC COMMENTS ON THE NEW REMEDIAL ORDER

3.1 On page 2, under 2(5) (1)(b) it says 'the gametes of the applicant were used to bring about the creation of an embryo' whereas it is surely only one gamete that leads to the creation of a single embryo?

3.2 On page 2, under 2(5) (5) the question of dispensing of consent is dealt with. In our response to the first RO, we asked how the question of 'incapable of giving agreement' would be determined and we remain concerned about this. We are aware that some surrogates can be hard to trace for the purpose of giving consent, sometimes hampered by poor practices among treatment centres, and this should not be seen as a reason for not undertaking extensive efforts to trace her. In similar vein, we are concerned at the potential for loose interpretation of what constitutes her being 'incapable of giving agreement'.

29th August 2018