Maternity Action’s Response to the Law Commission’s Consultation on Surrogacy Reform

October 2019

Maternity Action is the UK’s leading charity committed to ending inequality and improving the health and wellbeing of pregnant women, partners and young children - from conception through to the child’s early years. We deliver free, specialist advice on employment rights, maternity pay, maternity benefits and the rights of migrant and asylum seeking women through our telephone helplines. We maintain comprehensive, up to date online information about maternity and parental rights, which is prepared by our in-house legal team. We undertake research, policy and influencing work to protect and strengthen maternity rights and improve the health and wellbeing of all pregnant women, new mothers and their partners.

Our work focuses on policies that impact on the health and wellbeing of women facing severe and multiple disadvantage. Our advice lines support women who are on low incomes or destitute, who are homeless or living in precarious, overcrowded or unsuitable housing, whose migration status is uncertain or are in the asylum system and subject to dispersal around the UK during pregnancy or as they become mothers. We also campaign on behalf of those may be charged for their NHS maternity care, and whose physical and mental health may be harmed as a result. And we conduct research with women in at-risk, seldom heard groups facing multilevel barriers to accessing perinatal mental healthcare, including Black, Asian and minority ethnic (BAME) women, young women, women in Gypsy and Traveller communities, and LGBT people.

As well as drawing on our policy expertise, we have also been fortunate to draw on the considerable expertise of a Maternity Action trustee, Emeritus Professor Susan Bewley, a retired consultant obstetrician. Prof Bewley reported the first IVF maternal death in the literature (an ovum donation case) in 1991. She has observed and written about the obstetric complications of IVF pregnancy. As well as speaking about surrogacy at the Department of Law at Manchester University, she has direct, first-hand experience of many UK surrogates with and without obstetric complications. Her most recent relevant systematic review of the global literature was on Abuse and Assisted Reproductive Technology where commercial surrogacy has been identified as a main concern. Prof Bewley was co-founded the website who pays this doctor.org, a platform that allows doctors to declare interests, and she was the recipient of the British Medical Journal’s Speaking Truth to Power award.

The Law Commission has undertaken a review of existing surrogacy laws in the UK entitled Building Families Through Surrogacy: A New Law. As part of this review, the Law Commission launched a public consultation to gauge views on a variety of issues, from their proposed new pre-conception agreement and related pathway to the types and level of payments for surrogate mothers. In this document, Maternity Action sets out our response to some of these questions. We express our serious reservations about the length and language of the
consultation document, as well as the process of engaging stakeholder organisations, like ourselves, working with vulnerable women during pregnancy and early parenthood. We have not engaged with all of the questions in the consultation document. This is partly due to the length of the document and our capacity in terms of staff time. It also partly because we do not have expertise in all the areas covered by the consultation. We have limited our response to the areas where we do have most expertise.

**Maternity Action concerns about the consultation process**

Maternity Action has a number of concerns about the process of the consultation. First, the consultation has not been widely publicised. We came across it by chance, and at a point in time midway through the consultation process, further limiting our ability to respond in full.

Our view is that the Law Commission should have identified and contacted directly those organisations representing vulnerable women who may become surrogate mothers, as well as charities working in the birth world, including Maternity Action, Birthrights, Birth Companions, the British Pregnancy Advisory Service, NCT and others. The Law Commission should have informed them about the consultation at its launch, asked them whether the deadlines allowed sufficient time to respond (evidently they have not as the deadline was extended by a fortnight, and many organisations like ourselves are unable to respond in full). The Law Commission should also have invited these stakeholder organisations to the public events that were held to further explain the context and content of the consultation, as well as facilitating a roundtable discussion with them as part of the consultation process.

In general, the document did not reflect on the context of surrogacy and the problematic sex and race inequalities that underpin it, particularly internationally.

**Our concerns about the length and language of the consultation documents**

We are concerned about the length of the consultation document and the large number of questions respondents are asked to answer. At 502 pages and with 118 questions, responding to the full consultation requires a significant amount of time and energy as well as familiarity with legal and medical terminology. Even the Short Form Questionnaire designed for those with lived experience of surrogacy arrangements is very long; it has 46 questions. The language of the questions, which is understandably yet problematically very legalistic, makes it difficult to understand for lay people and especially for those with language or literacy challenges. The fact that the consultation paper contains a glossary containing definitions of legal and medical terms with which consultees may be unfamiliar shows how inaccessible the document is to most ordinary people, and how time-consuming filling it in must be.

Maternity Action contends that the length and opaque language used in the consultation means that it is not accessible to small charities and, more importantly, to the women most likely to be surrogate mothers whose rights and interests are directly affected by any legal changes in this area. Small charities like Maternity Action, with limited capacity and resources, cannot respond fully to the consultation. While we have selected specific
questions to respond to, we know of another charity with expertise in pregnancy and birth who decided they did not have the capacity to respond at all.

Our view is that this consultation falls short of any guidance or standards on a reasonable consultation format. Maternity Action has considerable experience of responding to technical and legal consultations and we have found that other government departments and non-departmental public bodies, such as NICE, the HFEA and DHSC, have succeeded in producing much clearer consultations which have used a variety of outreach measures to genuinely engage with the public.

We appreciate the Law Commission’s offering to meet Maternity Action representatives when we contacted the consultation team to attend a (sold out) public consultation event. But this reactive approach is insufficient. Saying “we’ve made it easier for people to come to us” relies on affected parties chancing upon the document and having the confidence and ability to approach a public body, which may be too intimidating for vulnerable surrogates. It is Maternity Action’s view that, in order to meet government standards for public consultation, the Law Commission is obliged to proactively engage with a wide range of women’s rights and welfare organisations, as well as charities working across the pregnancy and birth world.

**Our concerns about the case for reform**

Crucially for Maternity Action, the Law Commission has failed to make a cogent case for why reform of the existing laws relating to surrogacy is required. The long, unwieldy consultation document suggests that the law has fallen behind public attitudes but the only evidence provided for this assertion was one private opinion poll carried out in 2014 with no way of comparing this data to previous opinion polls to show trends over time. Maternity Action would contend that attitudes towards surrogacy are far from a settled matter and it would be wrong to assume, on the basis of one poll, that the majority of the public support any change to existing laws.

In our meeting with the Law Commission, Spencer Clark, the lead lawyer for the project, explained that the call for reform comes from both intended parents and surrogate mothers, who, he claimed, are both asking that the intended parents be given the status of legal parents from birth in order to avoid six to nine months of legal uncertainty, and reduce the number of cases going through the domestic courts for resolution. But none of that evidence is presented clearly in the consultation document, and we have no way of corroborating whether surrogate mothers’ interests and positions are identically aligned with intended parents on this. Given that part of the objective for reforming surrogacy law, as explained to us by the Law Commission, is to make it safer, in the sense of more legally certain and straightforward, in the UK than overseas, the incidence of surrogacy could increase substantially after the changes are introduced. With demand for surrogacy increasing, due to increasing infertility because of age, and increasing desire from gay men, there is a worry that numbers will increase significantly. There is, then, even more reason to be sure that intended
parents’ and surrogate mothers’ interests and positions are aligned, and whether the proposed legal changes will improve the situation for surrogate mothers.

**Maternity Action concerns regarding the vulnerability of surrogate mothers**

Surrogates may be vulnerable to exploitation as there is a generally a power imbalance between surrogate mothers and intended parents. Intended parents tend to be older, wealthier, better educated and employed in higher status jobs than surrogate mothers.\(^1\) Indeed, the consultation document itself notes this socio-economic imbalance.

Though there does not appear to be any research exclusively considering the demographic characteristics of surrogates in the UK, evidence from other studies indicates that the majority of women who act as surrogate mothers are substantially less well-off, less powerful and less endowed with status than the majority of intended parents. For example, one 2003 study of 34 surrogate mothers found that 14 of them were partly skilled/unskilled, 9 were skilled/manual, and only 4 were professional/managerial. In total, therefore, 96 percent of surrogate mothers were outside the professional/managerial social class. 82 percent of the surrogate mothers either did not work or only worked part-time. Evidently then, in socioeconomic terms, most surrogate mothers live on low incomes. This is significant as the imbalance in socio-economic status means that there is a power imbalance in the relationship between the intended parents and the surrogate mother.

Though there may be some exceptions to this pattern in what are known as “traditional” or “altruistic” surrogacy arrangements – such as a sister carrying a baby for her brother/sister – these arrangements account for the minority of surrogacy arrangements. In the study cited, only 21 per cent were a known surrogate, for example.\(^2\) Moreover, there may be other power imbalances in these familial arrangements, and economic inequalities may still exist. Another vulnerability relates to age: Some surrogate mothers are very young and may not understand the psychological or emotional consequences of giving up a baby they have carried and birthed, may regret their decisions later at the time of relinquishment or even later in life, when it is too late to do anything about it.\(^3\) Evidently, then, surrogate mothers are in a vulnerable position.

**Maternity Action concerns regarding the physical and psychosocial impacts of surrogacy on surrogate mothers**

There are also documented medical and psychosocial risks to surrogacy. All pregnancies carry physical and mental health risks to pregnant women. These range from trivial to very severe (sepsis, preeclampsia, haemorrhage and maternal death for the woman; abnormality,

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prematurity, stillbirth, brain damage, infant death for the baby). These risks are entirely unknown for untested primigravidae (first time mothers), but much lower for multigravidae who have achieved full-term successful birth.

Risks for the non-traditional surrogate are higher. The surrogate, or another woman, may be involved as egg donor, which involves undergoing ovarian stimulation, egg extractions and a small risk of the serious complication of ovarian hyperstimulation syndrome, or OHSS. The surrogate may undergo many appointments, drug treatments, invasive procedures and timed embryo transfer. More importantly, she is at a significantly increased risk of developing preeclampsia. If it is a twin pregnancy, she is at increased risk of every complication barring postmaturity. Preeclampsia and multiple pregnancy, which remain high in the UK IVF sector, both increase the risk of prematurity, with the lifelong sequelae for the child. There have been reports of higher multiple pregnancy and C-section (CS) rates in international surrogacy, with the latter possibly related to size differences between, for example, Western men and Asian women, or "timed" deliveries to suit commissioning parents picking up the babies. On a perinatal mental health level, although many surrogates are keen to hand over the baby, there are a lot of dramatic hormonal events in the first days and puerperium (6 weeks), which may increase a surrogate mother’s risks of experiencing postnatal depression (PND) and postpartum psychosis.

Finally, we have concerns about the rights of children born by surrogacy. National recommendations for baby feeding are for exclusive breastfeeding for six months, and the UK already has poor rates internationally. We do not want to pressurise or make mothers feel guilty, but in surrogacy this loss to the child is inevitable and should be recognised/factored in, rather than glossed over. Some commissioning parents may try to breast feed but this form of feeding and comforting cannot happen in gay couples.

**Maternity Action concerns regarding the human rights of surrogate mothers and the child**

Maternity Action also notes comments made by the UN Special Rapporteur on the sale and sexual exploitation of children last year⁴. These comments mirror our own position and concerns. The rapporteur warned that children face becoming commodities as surrogacy arrangements become more prevalent, and urgent action is needed to protect their rights. She said, “There is no right to have a child under international law. Children are not goods or services that the State can guarantee or provide. They are human beings with rights. Surrogacy is a growing industry driven by international demand, making it an area of concern for children’s rights and protection.”

The Special Rapporteur explained that if a surrogate mother or third party receives remuneration or any other consideration for the transfer of the child, a sale occurs, as defined under international human rights law.

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Given the power imbalance between intended parents and surrogate mothers, the vulnerability of surrogate mothers, the documented negative medical and psychosocial impact that fertility treatment and surrogacy can have on surrogate mothers, and the children’s rights issues that surrogacy may undermine, it is imperative that organisations representing vulnerable women speak up on their behalf. Maternity Action’s aim in responding is to this consultation, therefore, is to put the surrogate mother at the centre of any legal change around the regulation of surrogacy.

**Our concerns about how the proposed new pre-conception pathway could undermine surrogate mothers’ rights**

We are concerned that the new pathway offers insufficient protections to surrogates generally who may wish to change their mind if they are given sufficient time to do so, and we particularly object to reducing protection in this area for traditional surrogates. While any gestational mother is a biological mother, whether or not she has a genetic relationship to the child, the psychological implications of relinquishment for both the birth mother and the child may be greater where there is both a genetic and a gestational relationship.

**Our concerns regarding the commercialisation of surrogacy**

The Law Commission’s consultation document has not convinced Maternity Action of the need for reform of surrogacy laws and regulations. In particular, we are concerned by consultation questions which suggest relaxing laws relating to surrogacy brokering services and the advertising of surrogacy. We can see no justification for introducing new third party agencies who may be driven by profit motives. Maternity Action is also concerned by the number of questions suggesting payments for various aspects of surrogacy which represents a significant shift from the current model based on altruism to a model driven by financial imperative. Maternity Action believes that payments should be limited to the reimbursement of medical and related costs in connection with the pregnancy, and medical costs in connection with birth or miscarriage, together with compensation for death of or injury to the surrogate.

**Our concerns about the payment of NHS charges for overseas visitors**

Maternity Action notes that nowhere in the long section about costs arising from the pregnancy is consideration given to who should pay the cost of NHS charges for overseas visitors. Maternity Action has considerable expertise in this area, having published several research reports and offering a helpline service and some case work support to women who have been charged for their maternity care.

The Law Commission should be aware that women who are not ordinarily resident in the UK are likely to be charged 150% of the NHS tariff for their maternity care. Typically, this starts at

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6 [https://maternityaction.org.uk/maternity-care-access-advice-service/](https://maternityaction.org.uk/maternity-care-access-advice-service/)
£7,000 for a straightforward pregnancy and labour but can be much higher if there are complications or if the baby requires care in a neonatal unit or if the mother requires further treatment.

The rules for eligibility for charging are complicated and surrogate mothers may not realise that they are chargeable before they enter into the agreement. Only people deemed ordinarily resident in the UK, or who belong to an exempted group are entitled to free secondary (hospital) care in the UK. British citizens and non-EEA citizens who have Indefinite Leave to Remain in the UK are deemed ordinarily resident if they live in the United Kingdom but since 2015 all other longer-term visa holders are required to pay an Immigration Health Surcharge which entitles them to free use of all NHS services for the duration of their visa. Visitors to the United Kingdom are charged for any healthcare they receive whilst in the UK. Overseas visitors are charged 150% of the normal tariff and Clinical Commissioning Groups and hospitals have a duty to report to the Home Office any patients who have been invoiced £500 or more where the bill remains outstanding for longer than 2 months or where a repayment plan has not been negotiated. Some migrants who are not ordinarily resident are exempted from NHS charges, including refugees, asylum seekers awaiting a decision, and refused asylum seekers supported by the Home Office, as well as victims of modern slavery. Holders of visitor visas and undocumented migrants are the main chargeable groups under current rules. It is unclear how EU nationals will be dealt with in the charging regime after Brexit if reciprocal healthcare agreements end.

Many of the women who contact us having been charged are vulnerable and destitute. Some have become pregnant as a result of “survival sex” where they have exchanged sex for a sofa to sleep on or for a meal. These women may well be attracted to an offer of surrogacy, particularly if there is a move away from an altruistic model and towards payments. Maternity Action is concerned that women in this situation would find themselves responsible for paying the debt to the NHS. NHS trusts issue the invoices to the pregnant woman and debt collection is outsourced to private debt collection agencies. Maternity Action urges the Law Commission to ensure that no surrogate mother should be left with thousands of pounds of debt. The cost of NHS treatment should be paid by the intended parents.

Maternity Action’s position on employment rights and statutory payments relating to maternity and paternity

Consultation Question 101.

17.18 We invite consultees’ views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate’s spouse, civil partner or partner requires reform.

Maternity Action is the UK’s leading charity committed to ending inequality and improving the health and well-being of pregnant women, new parents and their children in the early years. Maternity Action advises more than 2000 pregnant women and new parents about
their maternity and parental rights and benefits each year and receives over 1 million views per year of our online information.

We receive a small number of calls from intended parents, approximately 5 – 10 per annum. The intended parents we speak to are usually eligible and intend to apply for a Parental Order. In some cases the surrogate mother is in the UK and in other cases she is overseas.

At present, paternity leave and pay (adoption) is only available to one of the intended parents, providing the intended parents intend to apply for a parental order. In those circumstances, the other intended parent would usually hope to take adoption leave and pay. It is up to the intended parents to decide who is going to be the primary adopter for the purposes of taking adoption leave and pay and who is going to take paternity leave and pay (adoption).

Unfortunately, the entitlement to leave and pay is not as straightforward as suggested. An intended parent must be an employee to qualify for leave (paternity leave and adoption leave), whereas intended parents with more precarious work, such as agency, casual and zero hours workers are not entitled to leave (which gives them the right to return to the same job) but they may be able to meet the qualifying conditions for statutory pay (paternity and adoption) during the period in which they take time off to look after their new baby.

Recommendation

In order to give the spouse, partner or civil partner of the surrogate mother the right to take paternity leave and pay, both the provisions in relation to leave\(^7\) and pay\(^8\) would need to be reformed to allow two people to qualify for paternity leave and pay in respect of the same baby:

- paternity leave/pay for the person supporting the surrogate mother (without the requirement to care for the baby during this period) and
- paternity leave/pay (adoption) for the intended parent who is caring for the child and supporting the primary adopter or paternity leave/pay for the intended parent who is also the father.

Consultation Question 102.

17.32 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Currently, the surrogate mother is entitled to either Statutory Maternity Pay (SMP) or Maternity Allowance (MA) depending on whether she meets the qualifying conditions for one or the other.

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\(^7\) Paternity and Adoption Leave Regs 2002, reg 4

\(^8\) Social Security Contributions and benefits Act 1992, s.171ZE (4)
It is not quite correct to say (at 17.28) that MA is primarily aimed at self-employed mothers:

17.28 Maternity allowance is primarily aimed at those mothers who are self-employed, and therefore not eligible for statutory maternity pay, which is restricted to employees.

The Maternity Allowance quarterly statistics⁹ show that approx. 5 – 6% of MA claimants are self-employed but 10 – 12% are employed. MA is primarily a safety net to ensure that most women who are employed or who have worked until recently will be able to access some form of maternity pay. MA is the only maternity pay available to self-employed women.

As far as employment status is concerned, a woman needs to be an employee to qualify for maternity leave but an agency, casual or zero hours worker could qualify for SMP. If a woman does not meet the qualifying conditions for SMP, namely, 26 weeks continuous employment by the 15th week before her baby is due and does not have average weekly earnings above the Lower Earnings Limits (£118 pw in 2019/20) she cannot qualify for SMP and will need to claim MA instead.

Many employed women lose out on SMP because their earnings are too low, they change jobs in pregnancy, they are dismissed or made redundant or they take sick leave. In those circumstances, most employed women can meet the more flexible qualifying conditions for MA of 26 weeks employment (which doesn’t have to be continuous weeks) in the 66 weeks before the baby is due. Both employed and self-employed work can be used and for self-employed women this is the only option available to them as they cannot claim SMP.

There is also a key difference between SMP and MA in respect of rate of pay and impact on ability to claim means-tested benefits such as Universal Credit and/or the Sure Start Maternity Grant. SMP (as Statutory Adoption Pay) is paid at 90% of average earnings for the first six weeks, then the statutory rate (currently £148.68 in 2019/20 or 90% of average earnings if that is lower). MA is only paid at the statutory rate.

Parents who struggle to pay rent and bills during this period of lower than normal earnings can apply for Universal Credit. Entitlement to Universal Credit is means-tested and depends on the total family income. Any SMP is partially disregarded under Universal Credit rules but MA is treated as another benefit and is offset against Universal Credit pound for pound. Intended parents can only claim the Sure Start Maternity Grant of £500 to buy things for a first baby or first multiple birth if they are eligible for a qualifying benefit such as Universal Credit. However, the disparity in treatment of SMP and MA can mean that a mother on MA cannot qualify for Universal Credit and, as a result, is also ineligible to claim the Sure Start Maternity Grant.

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Mothers on MA are significantly worse off financially than if they could claim SMP and are disadvantaged under the benefits system. Under legacy benefits such as Child Tax Credit, parents were significantly better supported during this period when their earnings dropped. In the absence of a change in DWP policy in the way MA is treated under Universal Credit rules, Maternity Action suggests that reforms are needed to ensure that more parents and intended parents can meet the eligibility criteria for Statutory Maternity Pay, Statutory Paternity Pay or Statutory Adoption Pay, such as making it available to parents with earnings below the Lower Earnings Limit, as currently being suggested by DWP in relation to reforms to Statutory Sick Pay\(^\text{10}\).

Statutory Adoption Pay and Statutory Paternity Pay do not currently have any equivalent provision for self-employed intended parents or those who are unable to meet the qualifying conditions for Statutory Adoption Pay. One option could be to introduce an ‘Adoption Allowance’ and ‘Paternity Allowance’ for self-employed and those parents who cannot qualify for Statutory Adoption Pay or Statutory Paternity Pay (Adoption). This would give a flat rate level of income, currently £148.68 per week. However, if this mirrors Maternity Allowance it does not provide for 90% of average earnings in the first six weeks and leaves parents with significantly less support from Universal Credit and they may not be able to claim the Sure Start Maternity Grant as a result of losing out on an award of Universal Credit.

For example, if only one of a couple is working, the parents are free to decide that the working parent will take adoption leave and pay so that they can both be at home to look after their new baby. During receipt of Statutory Adoption Pay of £148.68pw, the couple would be entitled to Universal Credit of £640 pcm to top up their income during this period. If the parent was self-employed and entitled to an equivalent of Adoption Allowance, the Adoption Allowance would be deducted from the Universal Credit award pound for pound and the same couple would only be entitled to Universal Credit of £86 pcm making it not worthwhile claiming the allowance and leaving those most in need of further support without it.

**Recommendation**

In view of the fact that the surrogate mother is likely to be eligible for SMP or MA, if MA were to be extended to an intended parent who is self-employed, it would need to allow for the possibility that two people might be eligible for MA for the same baby:

- the surrogate mother would claim MA in relation to childbirth on the basis of employment (if she is not able to claim SMP) or self-employment.
- One of the intended parents would claim MA on the basis of employment (where s/he is not able to claim Statutory Adoption Pay) or self-employment.

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Alternatively, Maternity Action supports proposals to reform Statutory Adoption Pay and Statutory Paternity Pay to make it more widely available so that parents do not miss out because they changed jobs, lost their job during the qualifying period, took sick leave or are on a low income.

Maternity Action also supports proposals to provide an equivalent to Maternity Allowance for self-employed parents and employed parents who do not meet the qualifying conditions for statutory pay. These parents should also be treated as working and earning during their leave period and should not be disadvantaged under the Universal Credit regulations if they need further support during this period of lower income.

**Consultation Question 103.**

17.36 We invite consultees’ views as to: (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and (2) if reform is needed, suggestions on reform.

The right of the father, spouse, civil partner or intended parents to accompany a pregnant woman to two antenatal appointments does not include the right to paid leave. Maternity Action supports the view that this leave should be paid.

However, as the right is only to accompany a pregnant woman to antenatal appointments, not to attend antenatal appointments, we consider that in view of the fact that the purpose of antenatal appointments is to protect the health of the pregnant woman and baby and to preserve confidentiality between a pregnant woman and her medical advisers, the right to accompany should be limited to two appointments.

If intended parents were to be able to accompany a surrogate mother to more than two appointments, further consideration should be given as to how to protect more surrogates who may be in more vulnerable situations.

Maternity Action supports a recommendation to enable an intended parent to start adoption leave/pay before the birth if they choose to. Maternity leave/pay can start up to 11 weeks before the expected week of childbirth. Intended parents that we speak to, especially where the surrogate mother is overseas, often have to use up all their annual leave and agree further periods of unpaid leave in order to spend time with the surrogate mother prior to the birth and to arrange paperwork prior to returning to the UK with their baby. Being able to start adoption leave/pay prior to the birth would be very beneficial for some intended parents.

**Consultation Question 104.**

17.40 We invite consultees’ views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under
Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

The Management of Health and Safety at Work Regulations 1999, reg. 16, requires an employer to carry out a risk assessment that takes account of the risks to ‘pregnant workers and workers who have recently given birth or are breastfeeding’. In our view, this includes an intended parent who is breastfeeding as well as the obligation to provide somewhere for a nursing mother to rest under regulation 25 above so the regulations as they currently stand are sufficient.

In practice, these provisions do not give breastfeeding employees rights to time off to express or breastfeed or the right to facilities for expressing milk. Employees may be able to use these health and safety provisions to negotiate access to a room for expressing or adjustments to their working hours to enable them to continue breastfeeding on health and safety grounds but time off and facilities is currently a matter of good practice rather than a legal requirement as UK law currently stands.

Consultation Question 105.

17.43 We invite consultees’ views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Callers to the Maternity Action advice line from intended parents often disclose that they were forced out of their job as a result of periods off work or off sick following a number of attempts at failed fertility treatment. Whilst not specifically related to employment rights and surrogacy arrangements, better protections are needed to prevent dismissal as a result of fertility treatment and sick leave following fertility treatment. This affects family incomes and job prospects and can make entering into a surrogacy arrangement unaffordable for many.

Contact

If you require further information or wish to discuss any aspect of our submission in detail, please do not hesitate to contact Scarlet Harris, Head of Policy and Campaigns, on 0207 253 2288 or scarletharris@maternityaction.org.uk