**Surrogacy in England and Wales**

**Government Reports:**

Warnock Report: *Report of the Committee of Inquiry into Human Fertilisation and Embryology* (HMSO, London 1984) Cm 9314

Brazier Report: *Surrogacy:* *Review for Health Ministers of Current Arrangements for Payments and Regulation, Report of the Review Team* (HMSO, London 1998) Cm 4068

**Legislation:**

*Surrogacy Arrangements Act 1985*

 Surrogacy agreements unenforceable by or against any of the parties

*Human Fertilisation and Embryology Act 1990*

*Human Fertilisation and Embryology Act 2008*

Section 54: Two Applicants (\*\*\*NOTE: until 2018, it was not possible for a sole applicant to obtain a Parental Order – now provided for in s54A)

The Court may make a parental order if the following conditions are satisfied:

* a genetic relationship between the commissioning parents and the child (s 54(1))
* the commissioning parents are either married, civil partners, or in an enduring family relationship (s 54(2))
* the application must be made within six months of the child’s birth (s 54(3))
* the child is already living with the commissioning parents (s 54(4)(a))
* the commissioning parents are domiciled in the United Kingdom (s 54(4)(b))
* the commissioning parents are both over 18 (s 54(5))
* both the surrogate mother, and any other man or woman recognised as a legal parent, have freely, unconditionally, and with full understanding, consented to the making of the order (s 54(6)) – unless such parent cannot be found or is incapable of giving consent (s 54(7))
* consent of the surrogate mother must be given more than six weeks after birth (s 54(7))
* unless authorised by the court, no money other than “expenses reasonably incurred” can be given in relation to making the surrogacy arrangement, handing over the child, or consenting to the order (s 54(8))

*Embryology (Parental Orders) (Consequential, Transitional and Saving Provision) Order 2010*

The child’s welfare must be the paramount consideration in deciding whether to make a parental order under s54 HFEA 2008

 *Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018*

Introduced s54A, which allows for one applicant to obtain a Parental Order, under the same conditions as are required for two applicants (save for the marriage, civil partnership or enduring family relationship)

**Key cases**

*Re X and Y (Foreign Surrogacy)* [2008] EWHC 3030 (Fam)

*A v P (Surrogacy: Parental Order: Death of Applicant)* [2011] EWHC 1738

*Re D and L (Minors) (Surrogacy)* [2012] EWHC 2631

*Re D (A Child)* [2014] EWHC 2121 (Fam)

*Re X (A Child) (Surrogacy: Time Limit)* [2014] EWHC 3135 (Fam)

*A v C* [2016] EWFC 4