

C02/2019



**Command Paper on a draft Bill to
make provision for surrogacy
arrangements and parental orders.**

**Presented to Parliament by
the Minister with responsibility for Health,
Care and Justice**

by Command of Her Majesty

6th May 2019

1. Introduction

2. Draft Bill and Explanatory Memorandum

Comments on this Command Paper should be:

- a) sent by email to command.papers@gibraltar.gov.gi, or
- b) delivered to Command Papers Consultation c/o Karl Tonna, Ministry of Health Care and Justice, Zone 1, Level 7, St Bernard's Hospital, Harbour Views Road, Gibraltar,

prior to 4:00 pm on Thursday 30th May 2019.

Any comments received later than 4:00 pm on Thursday 30th May 2019 may not be taken into account for the purposes of the relevant consultation.

Command Paper on Surrogacy

This Command Paper on surrogacy is published to address the lack of a legal framework in this area.

Introduction

Her Majesty's Government of Gibraltar understands that surrogacy is already a reality in Gibraltar and considers that there is now a requirement for a proper legal framework to be in place to govern such arrangements.

The New Law

The draft bill contained within this Command Paper provides the basis for those unable to conceive to engage in a non-commercial, altruistic surrogacy arrangement and seek legal parentage of the children by applying for a Parental Order, subject to the legal safeguards in place for the gestational and surrogate mother. Her Majesty's Government of Gibraltar is confident that, in effect, by mirroring the approach taken in the United Kingdom, Gibraltar is modernising the legal position of the family unit and removing the potential risks that may arise in the absence of effective surrogacy legislation in this jurisdiction.

Structure

The underlying regime of the bill is essentially in three parts. Firstly, the prohibition on commercial surrogacy arrangements, which will become a criminal offence, secondly, the establishment of a default position of all the parties involved in a non-commercial arrangement; and thirdly, the provisions and procedure to transfer full legal parentage to the commissioning parents.

Single Parents

The draft legislation further incorporates the recent changes to the law in the United Kingdom, which now permits a single individual to apply for a Parental Order, whereas, previously, this was limited to two joint intended parents only.

The Penalties

Under the provisions of the bill contained within this Command Paper, entering into a commercial surrogacy arrangement in Gibraltar could lead to a fine and/or potentially up to three months in prison. The meaning of commercial does not extend to the reimbursement of "reasonably incurred expenses" of the surrogate mother, or "reasonable payment" made to a non-profit making body that may have been involved in the facilitation of a surrogacy agreement.

Guidance

The Government is attuned to the potential complexities and difficulties that may arise when participating in a surrogacy arrangement for, both, surrogates and the intended parents. As a result, the Government will supplement this legislation with a clear and simple guidance document to ensure that those who will benefit from the change in law, understand the risks and processes involved.

Facilities

The draft bill does not provide, and it is not the Government's intention at this moment to provide, facilities for the insertion of genetic material into a surrogate mother. These will have to be purely private arrangements, as they will not be a service provided, or funded, by the Gibraltar Health Authority.

DRAFT BILL

CONTENTS

PRELIMINARY

1. Title and commencement.
2. Interpretation.

PART I – Arrangements

3. Surrogacy arrangements.
4. Commercial arrangements.
5. Advertisements.

PART II – Legal Parenthood

6. The “Mother”.
7. Application of Part II.
8. “Father”.
9. Cases where a woman is to be the other parent.
10. Egg donation.
11. Common law.
12. Adoption.
13. Effect.
14. Marriage.
15. Civil partnership.
16. Use of sperm, or transfer of embryo, after death of sperm donor.
17. Embryo transferred after death of husband etc. who was not the sperm donor.
18. Embryo transferred after death of civil partner or wife or intended female parent.
19. Transitional provision.

PART III – Parental Orders

20. Two applicants.
21. One applicant.
22. Prohibited degrees of relationship.
23. Jurisdiction and procedure.

24. Effect of a parental order.
25. Devolution and disposal of property.
26. Supplementary provisions as to inheritance, etc.
27. Effect on maintenance orders.
28. Power to make regulations.
29. Offences.
30. Amendments.
31. Power to make consequential amendments.

SCHEDULE 1

AMENDMENTS TO OTHER ACTS

B. xx/19

BILL

FOR

AN ACT to make new provision and regulate certain activities in connection with arrangements made with a view to women carrying children as surrogate mothers and providing a legislative framework for altruistic surrogacy.

ENACTED by the Legislature of Gibraltar.

PRELIMINARY

Title and commencement.

1. This Act may be cited as the Surrogacy Act 2019 and comes into operation on the day of publication.

Interpretation.

2.(1) Unless context otherwise provides, the following definitions shall have effect for 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 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) “to carry a child” is to be treated as beginning to carry it at the time of insemination 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.

(5) “made with such a view” at subsection (2)(b), 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).

(6) “Non-profit making body” means a body of persons whose activities are not carried on for profit.

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

(8) This Act applies to arrangements whether or not they are lawful.

(9) In Part I, where “he” or “him” is used, this is to be read as also including reference to “she” or “her”.

(10) “gametes” mean genetic material.

(11) “the court” means the family jurisdiction of the Supreme Court of Gibraltar.

PART I

Surrogacy Arrangements

Surrogacy arrangements.

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

Commercial arrangements.

4.(1) No person shall on a commercial basis do any of the following acts in Gibraltar, that is-

- (a) Initiate any negotiations with a view to the making of a surrogacy arrangement,
- (b) take part in any negotiations with a view to the making of a surrogacy arrangement,
- (c) offer or agree to negotiate the making of a surrogacy arrangement, or
- (d) compile any information with a view to its use in making, or negotiating the making of, surrogacy arrangements;

and no person shall in Gibraltar knowingly cause another to do any of those acts on a commercial basis.

(2) For the purposes of this section, a person does an act on a commercial basis (subject to subsection 3 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 the surrogate mother or prospective surrogate mother.

(3) 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 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 cases he did not do the act with a view to any payment being received in respect of it.

(4) 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

(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.

(5) 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.

(6) 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.

(7) Any reference in subsection (5) or (6) 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.

(8) 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 Gibraltar, 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.

(c) For the purposes of this subsection (8), a payment received by a person connected with a body is to be treated as received by the body.

(9) A non-profit making body is not guilty of an offence under subsection (8), 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.

(10) In proceedings against a body for an offence under subsection (8) 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.

(11) A person who in Gibraltar 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 (12) below is an activity of the body concerned.

(12) The activity referred to in subsection (11) above is negotiating or facilitating the making of surrogacy arrangements in Gibraltar, 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 (8) above as received) by the body concerned in contravention of subsection (8) above.

(13) A person is not guilty of an offence under subsection (11) 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 (12) is facilitating the making of surrogacy arrangements in Gibraltar.

(c) “facilitating the making of surrogacy arrangements ” is to be construed in accordance with subsection (12).

(14) In proceedings against a person for an offence committed under subsection (11) above, it is a defence to prove that he neither knew nor had reasonable cause to suspect that the activity described in subsection (12) above was an activity of the body concerned; and for the purposes of such proceedings any arrangement falling within subsection (12)(b) above shall be disregarded if it is proved that the payment concerned was not made in respect of the arrangement.

Advertisements.

5.(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.

(2) 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 4(1) even if done on a commercial basis (within the meaning of section 4).

(3) Where a newspaper or periodical containing an advertisement to which this section applies is published in Gibraltar, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.

(4) Where an advertisement to which this section applies is conveyed by means of an electronic communications network so as to be seen or heard (or both) in Gibraltar, any person who in Gibraltar 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.

(5) A person who publishes or causes to be published in Gibraltar an advertisement to which this section applies (not being an advertisement contained in a newspaper or periodical or conveyed by means of an electronic communications network) is guilty of an offence.

(6) A person who distributes or causes to be distributed in Gibraltar an advertisement to which this section applies (not being an advertisement contained in a newspaper or periodical published outside Gibraltar or an

advertisement conveyed by means of an electronic communications network) knowing it to contain such an indication as is mentioned in subsection (1) above is guilty of an offence.

PART II

Legal Parenthood

The “Mother”.

6.(1) The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child.

(2) Subsection (1) does not apply to any child, if as a result of adoption, the child is not treated as the woman's child.

(3) Subsection (1) applies whether the woman was in Gibraltar or elsewhere at the time of the placing in her of the embryo or the sperm and eggs.

Application of Part II.

7.(1) Part II applies in the case of a child who is being or has been carried by a woman (“W”) as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination, to determine who is to be treated as the other parent of the child.

(2) Subsection (1) has effect subject to the provisions of sections 16, 17 and 18 limiting the purposes for which a person is treated as the child's other parent by virtue of those sections.

“Father”.

8.(1) If—

(a) at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination, W was a party to a marriage with a man, and

(b) the creation of the embryo carried by her was not brought about with the sperm of the other party to the marriage,

subject to section 11, the other party to the marriage is to be treated as the father of the child unless it is shown that he did not consent to the

placing in her of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).

(2) This section applies whether W was in Gibraltar or elsewhere at the time mentioned in subsection (1)(a).

Cases where a woman is to be the other parent.

9.(1) If at the time of the placing in her of the embryo or the sperm and eggs or of her artificial insemination, W was a party to a civil partnership or a marriage with another woman, then subject to section 13, the other party to the civil partnership or marriage is to be treated as a parent of the child unless it is shown that she did not consent to the placing in W of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).

(2) This section applies whether W was in Gibraltar or elsewhere at the time mentioned in subsection (1).

Egg donation.

10. A woman is not to be treated as the parent of a child whom she is not carrying and has not carried by virtue of egg donation, except where she is so treated-

- (a) by virtue of section 9, or
- (b) by virtue of section 18, or
- (c) by virtue of adoption.

Common law.

11. Sections 8 and 9 do not affect any presumption applying in common law that a child is the legitimate child of the parties to a marriage.

Adoption.

12.(1) Section 8 does not apply to any child, if as a result of adoption, is not treated as the man's child.

(2) Section 9 does not apply to any child, if as a result of adoption, is not treated as the woman's child.

Effect of Part II.

13.(1) Where by virtue of this Part, a person is to be treated as the mother, father or parent of a child, that person is to be treated in law as the mother, father or parent (as the case may be) of the child for all purposes.

(2) Where by virtue of this Part, a person is not to be treated as mother, father or parent of the child, that person is to be treated in law as not being a parent of the child for any purpose.

(3) A child who has a parent by virtue of section 9, is a legitimate child of the child's parents.

(4) This Part operates without prejudice to:

(a) The Adoption Act; and

(b) The Children Act.

Marriage.

14.(1) References in this Part to the parties to a marriage at any time there referred to-

(a) are to the parties to a marriage subsisting at that time, unless judicial separation was then in force, but

(b) include the parties to a void marriage if either or both of them reasonably believed at that time that the marriage was valid, and for the purposes of those sections it is to be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the marriage was valid.

(2) In subsection (1)(a) "judicial separation" includes a legal separation obtained in a country outside Gibraltar.

Civil partnership.

15.(1) References in this Part to the parties to a marriage at any time there referred to-

(a) are to the parties to a marriage subsisting at that time, unless a judicial separation was then in force, but

(b) include the parties to a void marriage if either or both of them reasonably believed at that time that the marriage was valid; and for the purposes of those sections it is to be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the marriage was valid.

(2) In subsection (1)(a) “judicial separation” includes a legal separation obtained in a country outside Gibraltar.

Use of sperm, or transfer of embryo, after death of sperm donor.

16. (1) If—

(a) the child has been carried by W as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination,

(b) the creation of the embryo carried by W was brought about by using the sperm of a man after his death, or the creation of the embryo was brought about using the sperm of a man before his death but the embryo was placed in W after his death,

(c) the man consented in writing (and did not withdraw the consent)—

(i) to the use of his sperm after his death which brought about the creation of the embryo carried by W or (as the case may be) to the placing in W after his death of the embryo which was brought about using his sperm before his death, and

(ii) to being treated for the purpose mentioned in subsection (3) as the father of any resulting child,

(d) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the man to be treated for the purpose mentioned in subsection (3) as the father of the child, and

(e) no-one else is to be treated—

(i) as the father of the child by virtue of section 8 or by virtue of section 11, or

(ii) as a parent of the child by virtue of section 9 or by virtue of adoption,

then the man is to be treated for the purpose mentioned in subsection (3) as the father of the child.

(2) Subsection (1) applies whether W was in Gibraltar or elsewhere at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination.

(3) The purpose referred to in subsection (1) is only the purpose of enabling the man's particulars to be entered as the particulars of the child's father in a relevant register of births and no other purpose.

Embryo transferred after death of husband etc. who was not the sperm donor.

17.(1) If—

(a) the child has been carried by W as a result of the placing in her of an embryo,

(b) the embryo was created at a time when W was a party to a marriage with a man,

(c) the creation of the embryo was not brought about with the sperm of the other party to the marriage,

(d) the other party to the marriage died before the placing of the embryo in W,

(e) the other party to the marriage consented in writing (and did not withdraw the consent)—

(i) to the placing of the embryo in W after his death, and

(ii) to being treated for the purpose mentioned in subsection (3) as the father of any resulting child,

(f) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the man to be treated for the purpose mentioned in subsection (3) as the father of the child, and

(g) no-one else is to be treated—

(i) as the father of the child by virtue of section 8 or by virtue of section 11, or

(ii) as a parent of the child by virtue of section 9 or by virtue of adoption,

then the man is to be treated for the purpose mentioned in subsection (3) as the father of the child.

(2) Subsection (1) applies whether W was in Gibraltar or elsewhere at the time of the placing in her of the embryo.

(3) The purpose referred to in subsection (1) is the only purpose of enabling the man's particulars to be entered as the particulars of the child's father in a relevant register of births and no other purpose.

Embryo transferred after death of civil partner or wife or intended female parent.

18. (1) If—

(a) the child has been carried by W as the result of the placing in her of an embryo,

(b) the embryo was created at a time when W was a party to a civil partnership or marriage with another woman,

(c) the other party to the civil partnership or marriage died before the placing of the embryo in W,

(d) the other party to the civil partnership or marriage consented in writing (and did not withdraw the consent)—

(i) to the placing of the embryo in W after the death of the other party, and

(ii) to being treated for the purpose mentioned in subsection (3) as the parent of any resulting child,

(e) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the other party to the civil partnership or marriage to be treated for the purpose mentioned in subsection (3) as the parent of the child, and

(f) no one else is to be treated—

(i) as the father of the child by virtue of section 8 or by virtue of section 13 or

(ii) as a parent of the child by virtue of section 9 or by virtue of adoption,

then the other party to the civil partnership or marriage is to be treated for the purpose mentioned in subsection (3) as a parent of the child.

(2) Subsection (1) applies whether W was in Gibraltar or elsewhere at the time of the placing in her of the embryo.

(3) The purpose referred to in subsection (1) is the only purpose of enabling the deceased woman's particulars to be entered as the particulars of the child's other parent in a relevant register of births and no other purpose.

Transitional provision.

19. Part II shall only have effect in relation to children carried by women as a result of the placing in them of embryos or of sperm and eggs, or their artificial insemination (as the case may be), after the commencement of those sections.

PART III

Parental Orders

Two applicants.

20.(1) On an application made by two people (“the applicants”), the court may make an order providing for a child to be treated in law as the child of the applicants if—

- (a) 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 or her artificial insemination,
- (b) the gametes of at least one of the applicants were used to bring about the creation of the embryo, and
- (c) the conditions in subsections (2) to (8) are satisfied.

(2) The applicants must be—

- (a) husband and wife,
- (b) civil partners of each other, or
- (c) two persons who are living as partners in an enduring family relationship and are not within prohibited degrees of relationship in relation to each other.

(3) Except in a case falling within subsection (11), the applicants must apply for the order during the period of 6 months beginning with the day on which the child is born.

(4) At the time of the application and the making of the order—

(a) the child's home must be with the applicants, and

(b) either or both of the applicants must be domiciled in Gibraltar.

(5) At the time of the making of the order both the applicants must have attained the age of 18.

(6) The court must be satisfied that both—

(a) the woman who carried the child, and

(b) any other person who is a parent of the child but is not one of the applicants (including any man who is the father by virtue of section 8 or any woman who is a parent by virtue of section 9),

have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.

(7) Subsection (6) does not require the agreement of a person who cannot be found or is incapable of giving agreement; and the agreement of the woman who carried the child is ineffective for the purpose of that subsection if given by her less than six weeks after the child's birth.

(8) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by either of the applicants for or in consideration of—

(a) the making of the order,

(b) any agreement required by subsection (6),

(c) the handing over of the child to the applicants, or

(d) the making of arrangements with a view to the making of the order,

unless authorised by the court.

(9) An order relating to the child must not previously have been made under this section or section 21, unless the order has been quashed or an appeal against the order has been allowed.

(10) Subsection (1)(a) applies whether the woman was in Gibraltar or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

(11) An application which relates to a child born before the coming into force of this section may be made within the period of six months beginning with the day on which this section comes into force.

One Applicant.

21.(1) On an application made by one person (“the applicant”), the court may make an order providing for a child to be treated in law as the child of the applicant if—

(a) the child has been carried by a woman who is not the applicant, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination,

(b) the gametes of the applicant were used to bring about the creation of the embryo, and

(c) the conditions in subsections (2) to (8) are satisfied.

(2) Except in a case falling within subsection (10), the applicant must apply for the order within the period of 6 months beginning with the day on which the child is born.

(3) At the time of the application and the making of the order—

(a) the child’s home must be with the applicant, and

(b) the applicant must be domiciled in Gibraltar.

(4) At the time of the making of the order the applicant must have attained the age of 18.

(5) The court must be satisfied that both—

(a) the woman who carried the child, and

(b) any other person who is a parent of the child but is not one of the applicants (including any man who is the father by virtue of section 8 or any woman who is a parent by virtue of section 9),

have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.

(6) Subsection (5) does not require the agreement of a person who cannot be found or is incapable of giving agreement; and the agreement of the woman who carried the child is ineffective for the purpose of that subsection if given by her less than six weeks after the child’s birth.

(7) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by the applicant for or in consideration of—

- (a) the making of the order,
- (b) any agreement required by subsection (5)
- (c) the handing over of the child to the applicant, or
- (d) the making of arrangements with a view to the making of the order,

unless authorised by the court.

(8) An order relating to the child must not previously have been made under section 20 or this section, unless the order has been quashed or an appeal against the order has been allowed.

(9) Subsection (1)(a) applies whether the woman was in Gibraltar or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

(10) An application which relates to a child born before the coming into force of this section may be made within the period of six months beginning with the day on which this section comes into force.

Prohibited degrees of relationship.

22. For the purposes of this Part, two persons are within prohibited degrees of relationship if one is the other's parent, grandparent, sister, brother, aunt or uncle; and in this subsection references to relationships—

- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would subsist but for adoption, and
- (b) include the relationship of a child with his adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

Jurisdiction and procedure.

23.(1) The court having jurisdiction to make parental orders under this Act is the Supreme Court.

(2) The Chief Justice may make rules of court in regard to any matter to be prescribed under this Act and directing the manner in which applications to the court are to be made and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect.

(3) For the Purpose of any application under this Act and subject to any rules of court under this section, the court shall appoint some person or body to act as guardian ad litem of the minor upon the hearing of the application, with the duty of safeguarding the interests of the minor before the court.

(4) The rules in the Adoption Act shall be those followed with respect to the registration of the Parental Order.

(5) Until such rules take effect, any rules from time to time in force in England shall have effect, so far as applicable as if duly made under the provisions of the Act.

Effect of a parental order.

24.(1) Unless otherwise stated references in this section, section 25, section 26 and section 27–

(a) to applicants, children and parents shall be read in both the singular and plural;

(b) “named applicants” means the applicants named as parents on a parental order; and

(c) “subject children” means the children who are the subject of a parental order.

(2) Upon a parental order being made, all rights, duties, obligations and liabilities of the former parents, guardians of the child, in relation to the future custody, maintenance and education of the child including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the named applicants as though the child were a child born to the applicants in lawful wedlock and in respect of the same matters and in respect of the liability of a child to maintain his parents, the subject child shall stand to the named applicants exclusively in the position of a child born to the applicants in lawful wedlock:

Provided that in any case where two spouses are named applicants, such spouses shall in respect of the matters aforesaid and for the purpose of

the jurisdiction of any court to make orders as to the custody and maintenance of and right of access to children stand to each other and to the subject child in the same relation as they would have stood if they had been the lawful father and mother of the child, and the subject child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother respectively.

(2) Where a subject child or the spouse or issue of a subject child takes any interest in real or personal property under a disposition by the named applicants, or where those parents takes any interest in real or personal property under a disposition by a subject child or the spouse or issue of that child, any estate duty or other duty payable in consequence of death which becomes leviable in respect thereof shall be payable at the same rate as if the child had been born to the named applicants in lawful wedlock.

(3) For the purposes of this section, “disposition” means an assurance of any interest in property by any instrument whether inter vivos or by will.

(4) For the purposes of the enactments relating to friendly societies, collecting societies and industrial assurance companies, which enable such societies and companies to insure money to be paid for funeral expenses, and which restrict the persons to whom money may be paid on the death of a child under the age of ten, the named applicants shall be deemed to be the parents of the subject child and where before the parental order was made any such insurance had been effected by the former parent of the subject child the rights and liabilities under the policy shall by virtue of parental order be transferred to the named applicants and they shall for the purposes of those enactments be treated as the person who took out the policy.

(5) Without prejudice to where it is stated otherwise, the subject children of named applicants shall be treated as their children for all purposes in Gibraltar law.

Devolution and disposal of property.

25.(1) The provisions of this and the next following section shall have effect for securing that subject children are treated as children of the named applicants for the purposes of the devolution or disposal of real and personal property.

(2) Where, at any time after the making of a parental order, the named applicants, the subject child or any other person dies intestate in respect of any real or personal property (other than property subject to an entailed interest under a disposition made before the date of the parental

order) that property shall devolve in all respects as if the subject child were the child of the applicants born in lawful wedlock and were not the child of any other person.

(3) In any disposition of real or personal property made whether by instrument inter vivos or by will after the date of a parental order-

(a) any reference (whether express or implied) to the child of the named applicants shall be construed as, or as including, a reference to the subject child.

(b) any reference (whether express or implied) to the child of the subject child's former parents or either of them shall be construed as not being, or as not including a reference to the subject child; and

(c) any reference (whether express or implied) to a person related to the subject child in any degree shall be construed as a reference to the person who would be related to him in that degree if he were the child of the named applicants born in lawful wedlock and were not the child of any other person,

unless the contrary intention appears.

(4) Where under any disposition any real or personal property or any interest in such property is limited (whether subject to any preceding limitation or charge or not) in such a way that it would, apart from this section, devolve (as nearly as the law permits) along with a dignity or title of honour, then, whether or not the disposition contains an express reference to the dignity or title of honour, and whether or not the property or some interest in the property may in some event become severed therefrom, nothing in this section shall operate to sever the property or any interest therein from the dignity, but the property or interest shall devolve in all respects as if this section had not been enacted.

(5) References in this section to a parental order shall be construed as including references to a parental order made before the date of the commencement of this Act; but nothing in this section shall affect the devolution of any property on the intestacy of a person who died before that date, or any disposition made before that date.

Supplementary provisions as to inheritance, etc.

26.(1) For the purposes of the Administration of Estates Act 1933 to the devolution of any property in accordance with the provisions of section 15, and for the purposes of the construction of any such disposition as is

mentioned in that section, a subject child shall be deemed to be related to any other person being the child or subject child of one named applicant or (in the case of two named applicants) of either of the applicants:

(a) where he or she was subject child by two named applicants jointly, and that other person is the child or subject child of both of them, as brother or sister of the whole blood; or

(b) in any other case, as brother or sister of the half-blood.

(2) Notwithstanding any rule of law, a disposition made by will executed before the date of a parental order shall not be treated for the purposes of section 15 as made after that date by reason only that the will is confirmed by a codicil executed after that date.

(3) Notwithstanding anything in section 15, trustees or personal representatives may convey or distribute any real or personal property to or among the persons entitled thereto, without having ascertained that no parental order has been made by virtue of which any person is or may be entitled to any interest therein, and shall not be liable to any such person of whose claim they have not had notice at the time of the conveyance or distribution; but nothing in this subsection shall prejudice the right of any such person to follow the property, or any property representing it, into the hands of any person who may have received it, other than a purchaser.

(4) Where a parental order is made in respect of a person who has been previously adopted, the previous adoption shall be disregarded for the purposes of section 15 in relation to the devolution of any property on the death of a person dying intestate after the death of the making of the subsequent parental order in relation to any disposition of property made after that date.

Effect on maintenance orders.

27. Where a parental order is made in respect of a minor who is illegitimate, any maintenance order in force with respect to the minor, and any agreement whereby the father of the minor has undertaken to make payments specifically for the benefit of the minor shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the maintenance order or the agreement at the date of the adoption order:

Provided that where the minor is a subject child and the named applicant is a single woman, the order or agreement shall not cease to

have effect by virtue of this subsection upon the making of the parental order but shall cease to have effect if she subsequently marries.

Power to make regulations.

28. The Minister may make such Regulations or Rules as may be necessary for carrying out the purposes of this Act.

Offences.

29.(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 4 to a fine not exceeding level 4 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 5 to a fine not exceeding level 4 on the standard scale.

(2) No proceedings for an offence under this Act shall be instituted without the consent of the Attorney General.

(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 4 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 only to an offence under this Act, the reference to six months in section 158(1) of the Criminal Procedure and Evidence Act 2011 shall be read as if it were a reference to two years.

Amendments.

30. Schedule 1 has effect for the purpose of amending the enactments referred to therein.

Power to make consequential amendments.

31. The Government may by order declare the consequential amendments to other enactments that are required as a result of the commencement of this Act.

SCHEDULE 1

Section 30

AMENDMENT TO OTHER ACTS

Amendments to the Adoption Act.

1. At section 2 (Interpretation)–

(a) in subsection (1) after “be that minor’s guardian” insert “ “intended parents”, means the people intended to be the individual or individuals who seek to obtain a parental order”,

(b) in subsection (1) after the insertion at subparagraph (a) above, insert “ “parental order” means an order made under sections 20 and 21 of the Surrogacy Act authorising the applicant to be treated as the parent or parents of the child it is made in respect of,

(c) in subsection (1) after “ “Register means the Adoption...” insert “and Parental Order”, and

(d) in subsection (1) after “means the officer appointed under this Act to keep the Adoption” insert “and Parental Order”.

2. At section 19 (Appointment of Registrar) in subsection (1) after “custody and control of the Adoption” insert “and Parental Order”.

3. At section 20 (Adoption Register)–

(a) in the title “Adoption Register”, after “Adoption” insert “and Parental Order”,

(b) in subsection (1) after “called the Adoption” insert “and Parental Order”,

(c) in subsection (1) after “therein by adoption” insert “and parental”,

(d) in subsection (2) after “making the appropriate entry in the Adoption” insert “and Parental Order”,

(e) insert subsection (2A)

“The Registrar of the Supreme Court shall cause every parental order to be communicated to the Registrar, and upon receipt of such communication the Registrar shall cause compliance to be made with the directions contained in such order in regard both to marking any entry in the Register of Births with the words “Parental Order”, and in regard to making the appropriate entry in the Adoption and Parental Order Register.”,

(f) in subsection (3) after “any entry in the Adoption” insert “and Parental Order”,

(g) in subsection (3)(a) after “birth of the adopted person” insert “or subject of a parental order”,

(h) in subsection (3)(a) after “evidence of the adoption” insert “or making of a parental order in respect of that person”,

(i) in subsection (3)(b) after “record of the date of the birth or the country of birth of the adopted person” insert “of the person who is the subject of a parental order”,

(j) in subsection (3)(b) after “evidence of the adoption” insert “or making of a parental order in respect of that person”,

(k) in subsection (3)(b) after “also as evidence of the date of the birth or country of the birth of the adopted person” insert “or the person who is the subject of a parental order”,

(l) in subsection (4) after “cause an index of the Adoption” insert “and Parental Order”,

(m) in subsection (4) after “certified copy of any entry in the Adoption” insert “and Parental Order”.

4. At section 21 (Directions as to registration)–

(a) in subsection (1) after “every adoption order” insert “and parental order”.

(b) in subsection (1) after “make in the Adoption” insert “and Parental Order”.

(c) in subsection (2)(b) after “is to bear after the adoption” insert “or making of a parental order”.

(d) in subsection (2) after “from the entry in the Adoption” insert “and Parental Order”.

(e) insert subsection (3A):

“Where upon an application for a parental order in respect of a minor there is proved to the satisfaction of the court the identity of the minor with a person to whom an entry in the register of births relates, any parental order made in pursuance of the application shall contain a direction to the Registrar to cause the entry in the Register of Births to be marked with the words “Parental Order”.

(f) in subsection (4) after “previous entry in the Adoption” insert “and Parental Order”.

(g) in subsection (5) after “where an adoption” insert “or parental”,

(h) in subsection (5) after “any entry in the Adoption” insert “and Parental Order”,

(i) in subsection (6) after “Register of Births or the Adoption” insert “and Parental Order”.

(j) in subsection (7) after “by which an adoption” insert “or parental”.

(j) in subsection (7) after “on the application of the adopter or of the adopted person” insert “or the person subject to a parental order or the person or persons who obtained a parental order”.

(k) in subsection (7) after “and where an adoption” insert “or parental”.

(l) in subsection (7) after “addition to the Adoption” insert “and Parental Order”.

5. At the Schedule :-

(a) In column 5, delete “of adopter or adopters” and insert “of adopter, adopters or the parent or parents by virtue of a parental order”, and

(b) In column 6, delete title and insert “Type of order, date of adoption or parental order and description of court by which made”.

Amendments to the Crimes Act.

6. At section 290 (Sex with an adult relative: Penetration)–

(a) in subsection (3) after “Adoption Act” insert “or a person treated as a child by virtue of a parental order under the Surrogacy Act”,

(b) in subsection (3) after “an adoptive parent” insert “or a parent by virtue of a parental order”, and

(c) in subsection (4) after “through adoption” insert “or by parental order”,

7. At section 291 (Sex with an adult relative: Consenting to penetration)–

(a) in subsection (3) after “Adoption Act” insert “or a person treated as a child by virtue of a parental order under the Surrogacy Act”,

(b) in subsection (3) after “an adoptive parent” insert “or a parent by virtue of a parental order”, and

(c) in subsection (4) after “through adoption” insert “or by parental order”.

Amendments to the Social Security (Employment Injuries Insurance) Act.

8. At section 2 (Interpretation) after “being the child, adopted child” insert “child by virtue of a parental order”.

Amendments to the Immigration, Asylum and Refugee Act.

9. At section 2 (Interpretation)–

(a) in subsection (2)(e) after “by virtue of an adoption order” insert “or parental order”, and

(b) in subsection (2)(e) after “that the adoption order” insert “or parental order” was made in Gibraltar.

Amendments to the Maintenance Act.

10. At section 2 (Interpretation) after “includes an illegitimate or adopted child” insert “or child by virtue of a parental order”, and

11. At section 30 (Interpretation of Part III) in subsection (1) after “an adopted child” insert “a child by virtue of a parental order”.

12. At section 63 (Interpretation of Part V) after “any child adopted by” insert “or child the subject of a parental order for”.

Amendments to the Social Security (Insurance) Act.

13. At section 2 (Interpretation) in subsection (4) insert “(cc) a child by virtue of a parental order shall be treated as if the child were legitimate issue of the applicant on the said order or if the child was deemed by the parental order to be the child of spouses or civil partners jointly, or by one of two spouses or civil partners after their marriage, or civil partnership, as the case may be; as if the child were legitimate issue of their marriage, or civil partnership and shall not be treated as being issue of any other person.

Amendments to the Pensions (Widows and Orphans) Act.

14. At section 2 in subsection (1) after “includes an adopted child” insert “a child by virtue of a parental order”.

Amendments to the Social Security (Closed Long-Term Benefits and Scheme) Act.

15. At section 2 (Interpretation) in subsection (4) insert “(cc) a child by virtue of a parental order shall be treated as if the child were legitimate issue of the applicant on the said order or if the child was deemed by the parental order to be the child of spouses or civil partners jointly, or by one of two spouses or civil partners after their marriage, or civil partnership, as the case may be; as if the child were legitimate issue of their marriage, or civil partnership and shall not be treated as being issue of any other person.

16. At section 11 (Guardian’s Allowance) in subsection (2)(i) after “has been adopted” insert “or the subject of a parental order”.

Amendments to the Social Security (Open Long-Term Benefits Scheme) Act.

17. At section 2 (Interpretation) in subsection (4) insert “(cc) a child by virtue of a parental order shall be treated as if the child were legitimate issue of the applicant on the said order or if the child was deemed by the parental order to be the child of spouses or civil partners jointly, or by one of two spouses or civil partners after their marriage, or civil partnership, as the case may be; as if the child were legitimate issue of their marriage, or civil partnership and shall not be treated as being issue of any other person.

18. At section 17 (Guardian’s Allowance) in subsection (2)(i) after “has been adopted” insert “or the subject of a parental order”.

Amendments to the Matrimonial Causes Act.

19. At section 5B (Dependent domicile of child not living with his father) insert subsection “(5) In this section, in

20. At section 48 (Child or children accepted as of the family) in subsection (1) after “illegitimate” insert “child by virtue of a parental order”.

Amendments to the Gibraltarian Status Act.

21. At section 2 (Interpretation) after “does not include an adopted child” insert “or child by virtue of a parental order”.

22. Insert section 8A (Registration of children the subject of a parental order)–

(1) The Minister may, in his absolute discretion, order the registrar to register any person who satisfies the Minister that–

(a) he is a British national, and

(b) he is the subject of a parental order where the applicant(s) were–

(i) a married couple, one of whom is a Gibraltarian;

(ii) an unmarried person who is not in a civil partnership; or

(iii) a couple in a civil partnership, one of whom is a Gibraltarian.

(2) The Minister may, in his absolute discretion, order the registrar to register any person who satisfies the Minister that–

(a) he is a British national; and

(b) he is the child of a person who is registered under paragraph (c) or (f) of section 5(1) if such a child is not himself entitled to otherwise be registered under paragraph (c) or (f) of section 5(1).

Amendments to the Births Deaths and Registration Rules.

23. At rule 8 (Particulars to be furnished to Registrar) insert subrule –

“(aa) where the registered person is a child by virtue of a parental order under the Surrogacy Act, and the certificate is to be in respect of him as a person having been treated as a child by virtue of a parental order—

(i) his name and address;

(ii) the date of his birth;

(iii) the name and surname of his parent or parents under the said Act; and

(iv) the date upon which, and the name of the court by which the parental order under the said Act was made;”

Amendments to the Civil Partnership Rules.

24. At Form-CP7-

(a) in Part 1-Details of the Children, section 1 (Children of both parties) after “Give details of any children born to you and the Respondent” insert “your children by virtue of a parental order”.

(b) in Part 1-Details of the Children, section 3 (other children) after “Give details of any children born to you or the Respondent that have not been treated as children of the family” insert “or your children by virtue of a parental order”.

(c) in Part II-Arrangements for the children of the family, section 10 (details of care and other court proceedings) at (c), after “adoption” insert “surrogacy”.

Amendments to the Administration of Estates Act.

25. At section 49 (Interpretation of Part V) in subsection (3) insert subsection

“(c) a person who is the subject of a parental order made in Gibraltar or in any part of the United Kingdom, the Isle of Man or the Channel Islands”.

Amendments to the Legitimacy Act.

26. At section 14 (Right of illegitimate child to succeed on intestacy of parents, and of parents to succeed on intestacy of illegitimate child) in subsection (4) insert subsection

“(c) a person who is the subject of a parental order made in Gibraltar or in any part of the United Kingdom, the Isle of Man or the Channel Islands”.

Amendments to the Children Act.

27. At section 25 at subsection (4) insert subsection

“(e) The Surrogacy Act”.

28. At section 29–

(a) In subsection (3)(a) delete “or”,

(b) In subsection (3)(b) after “child” insert “or”, and

(b) Insert subsection (3)(c) “to consent, or to refuse consent, to the making of an application with respect to the child becoming the subject of a parental order under the provisions of the Surrogacy Act”.

29. At section 32–

(a) In subsection (12)(a) after “for a relevant adoption order” insert “or parental order”, and

(b) In subsection 12(b) after “child’s adoption” insert “or child becoming the subject of a parental order”.

EXPLANATORY MEMORANDUM
(This memorandum is not part of the Act)

This Act provides for the regulation of surrogacy arrangements, the legal status of those participating in assisted reproduction arrangements and provision for parental orders to confer legal parenthood and transfer parental responsibility to the commissioning parents.