

- [Foreign & Commonwealth Office](#)

Surrogacy Overseas

Information for British nationals who are considering entering into surrogacy arrangements in foreign countries.

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Overview

International surrogacy is a complex area. The process for getting your child back to the UK can be very long and complicated, and can take several months to complete. In some countries surrogacy may only be legal for opposite-sex married couples who have been married for some time. If you are considering embarking on surrogacy in a foreign country we strongly recommend that you read the following guidance carefully and that you seek specialist legal advice in the UK and in the country you are travelling to before making any arrangements.

The passport and immigration procedures set out in these documents are based on the advice from the Home Office. The Home Office reserves the right to change any of its procedures or requirements without notice. Although you are entering into a surrogacy arrangement overseas, if you intend to settle in the UK you must comply with UK law. You should be aware that offering commercial brokering services to set up surrogacy arrangements in the UK is illegal. You are allowed to pay reasonable expenses to the surrogate mother. These expenses will be considered by a UK family court when seeking a UK parental order. You should bear this in mind when entering into a surrogacy agreement overseas.

As well as getting a passport for your child, you will also need to apply for a parental order to transfer legal rights from the surrogate mother to you and your partner. There is only a short, fixed period in which you can apply for a UK parental order.

Surrogacy clinics and hospitals

Surrogacy is only legal in a small number of countries. In some countries surrogacy may only be legal for opposite-sex married couples who have been married for some time. We cannot recommend specific hospitals or clinics overseas which deal with surrogacy. We encourage you to research your clinic thoroughly to ensure you are dealing with a responsible and reputable organisation.

Surrogacy has an important role in allowing intended parents to bring up a child when for whatever reason they are not in a position to have children themselves. It is also a lucrative business to clinics and individuals providing surrogacy services. Several cases have come to light where there is no genetic link between the intended parents and the child born through a surrogacy arrangement. We recommend that you make sure that you work with a reputable clinic which can satisfy you at an early stage that the child is genetically linked to you. In some countries clinics are able to register with national authorities and we recommend that you research this fully. HM Government does not provide a list of approved clinics overseas.

As part of the process of granting or recognising your child's British nationality, UK Visas and Immigration or Her Majesty's Passport Office (depending upon the route you follow) may need to satisfy themselves of the genetic link between parent(s) and child. If there are any concerns as to the clinic or surrogate the process may take longer and in some instances may also require you to provide DNA evidence.

Should evidence come to light of any wrongdoing on the clinic or surrogate's part we would encourage you to report this to the police. Please note that HM Government currently shares some information with overseas authorities to combat fraud and in line with local legal requirements.

British nationality and passport facilities

Under **UK nationality law**, the mother and father of a child are considered to be the woman who carries and gives birth to the child and her husband, i.e the man she is married to at the time of the child's conception. In some countries, where same-sex marriage or civil partnership is legal, this may refer to the birth mother of the child and her same-sex spouse at the time of the child's conception.

This means that even if your names appear on the local birth certificate, a baby born to a foreign national surrogate mother who is married will not be automatically eligible for British nationality. In this case you will need to first apply for Home Office registration of a child under 18 as a British citizen, before applying for a passport for the child.

If the surrogate mother is single or widowed/divorced then you do not need to apply for registration of the child and you can apply for a passport if the commissioning father is British, has a genetic link to the child and is able to pass on his nationality (e.g. is a British national otherwise than by descent).

You can find further information on this in the [Home Office guidance](#). Please note: This guidance was created in 2009 and as matters continue to evolve some aspects of the guidance may now be out of date. If you have any questions you should seek advice from a specialist UK immigration lawyer.

When the surrogate mother is single

If your child is born to a surrogate who is single (unmarried, divorced, widowed), then the child has an automatic claim to British nationality if the commissioning father is British, has a genetic link to the child and is able to pass on his nationality (e.g. is a British national otherwise than by descent).

If these conditions are met you can apply for a passport for the child. Please see our checklist, [Documents required for surrogacy without registration](#), and the [passport tool](#) for further guidance on making a passport application.

For the application to be processed we will need to be completely satisfied that the surrogate mother is single. **If there are any concerns as to surrogate's marital status, Her Majesty's Passport Office may need to complete additional checks and the passport application process may take longer.** You should be prepared to provide documentary evidence of the surrogate mother's single status, including confirming that the surrogacy clinic or surrogate will be able to provide you with relevant and genuine documentation before you enter into the surrogacy arrangement. Please bear in mind that it may be difficult to prove the single status of the surrogate mother, particularly if she is claiming never to have married. Also, a divorcee or widow may have remarried, so a divorce decree or death certificate alone may not be sufficient proof.

Please be aware, that some foreign clinics and individuals have in the past provided fraudulent documents for the surrogate mother. In this case, although you may be acting in good faith, the application will be refused and the child will need to be registered as a British citizen (see below). **This will mean that you may have to spend significantly longer overseas, waiting for the documents needed to allow your child to return to the UK.**

Under UK nationality law, the surrogate mother is considered the child's mother. You should enter the surrogate mother's details as the child's mother on the passport application form. While the commissioning father should sign the form, you should also ask the surrogate mother to sign the parental declaration as we need the permission of both parents to issue the passport.

Please note, it can take several weeks, if not months, to process applications for children born through surrogacy overseas and you should be prepared for an extended stay overseas once your child is born. The FCO does not handle passport applications and Embassies cannot expedite your application. Please use the [passport tool](#) for further information on how long it will take to process your application.

The FCO and Embassies are not ordinarily able to issue Emergency Travel Documents to children born through surrogacy overseas. The checks required to determine nationality for children born through surrogacy must be carried out by Her Majesty's Passport Office (as part of the passport application process) or UK Visas and immigration (as part of the nationality registration process).

When the surrogate mother is married

If the surrogate mother is married you will need to apply to register the child as a British Citizen under section 3(1) of the British Nationality Act 1981. To do this you should complete the [MN1 form](#), registration of a child under 18 as a British citizen. Please also see our checklist, [Documents required when registering your child as a British national](#) and the detailed [Home Office guidance](#).

- you can obtain an MN1 [form and guidance online](#).
- section 3(1) of the British Nationality Act 1981 allows children who are not automatically entitled to British citizenship at birth to be registered as British citizens at the discretion of the Home Secretary. The Home Office must be satisfied that:
 - at least one of the commissioning parents is a British Citizen
 - the surrogate parents have consented
 - had the child been born to the commissioning couple legitimately, s/he would have had an automatic claim to British citizenship or would have qualified for registration under the British Nationality Act 1981
- In cases where the British commissioning father is not biologically related to the child or where it is the commissioning mother who is the British citizen, you may also need to provide a parental order confirming that you have parental responsibility for the child (section on [Parental Rights](#) for further information about getting Parental Orders).

Once the application is with the Home Office you will need to check their [guidance on processing times](#). Please note that the FCO does not handle MN1 applications and Embassies cannot expedite these timelines. You are welcome to attach supporting letters explaining the urgency of your situation, but there is no guarantee that this will help to expedite the process. If you have any questions about the timeframe for issuing registration certificates you should contact the [Home Office](#).

Until your child is registered as a British Citizen s/he will not be eligible for a British passport. You should therefore be prepared for your baby to remain overseas until the registration is approved and the passport issued. You can only apply for a passport once the child has been registered as a British Citizen and not before.

The process of determining nationality and issuing a passport can take time and require a number of checks. You should be prepared for the whole process to take several months and should plan to remain overseas for some time following the child's birth. Please note that first-time applicants are not eligible for Emergency Travel Documents. For further information on processing times you should refer to the [Home Office website](#) and the [Passport Tool](#).

Visa applications for children born through surrogacy

If the circumstances of your surrogacy arrangement do not fit the scenarios described above you may need to apply for entry clearance for your child to enter the UK. You can find further information on this in the [Home Office guidance](#). Please note: This guidance was created in 2009 and as matters continue to evolve some aspects of the guidance may now be out of date. If you have any questions you should seek advice from a specialist UK immigration lawyer.

Parental rights

UK nationality law and English and Welsh, Scottish and Northern Irish family law differ. Even if your child is entitled to British nationality and a British passport, you will still need to apply for a parental order in the UK to transfer legal rights from the surrogate mother to you and your partner when a surrogate is used to have a child.

There is only a short, fixed period in which you can apply for a parental order. For the purposes of a UK parental order, the surrogate mother must give her consent for paternity to be signed over to the commissioning parents. This consent can only be given 6 weeks after the child is born and no earlier. You can't apply for a parental order once the child is older than 6 months. The child does not necessarily need to be in the UK for parents to get a parental order.

You can find more information about the requirements and process for applying for a parental order in the UK on gov.uk. Please refer any questions about this to a UK solicitor (in the part of the UK where you live (Scotland, Northern Ireland or England and Wales) who specialises in parental orders.

In certain cases, [the Home Office requires a parental order in order to register the child as a British Citizen](#). If you fall into one of the categories that require a parental order to register your child as a British Citizen, we strongly suggest you seek specialist legal advice.

Registering your child's birth with the British Embassy

If you are able to directly pass on your nationality, you will also be able to register your child's birth at the British Embassy and obtain a consular birth certificate. However, whilst we can enter the biological father's name on the register / birth certificate, we are obliged to enter the surrogate mother's name as the child's mother. Please see FCO guidance on [registering a birth abroad](#) for more information.

If you have registered your child with the Home Office as a British citizen, you will not need, or be able to get, a consular birth registration.

Legal Advice

If you are unsure about any of the above you should seek independent legal advice in the UK. The Home Office has published detailed guidance on [inter-country surrogacy](#).

You can find further information on this in the [Home Office guidance](#). Please note: This guidance was created in 2009 and as matters continue to evolve some aspects of the guidance may now be out of date. If you have any questions you should seek advice from a specialist UK immigration lawyer.

Specific Indian visa, entry and exit clearance requirements

The Indian Government has specific entry and exit requirements for couples travelling to India for surrogacy. If you are considering embarking on surrogacy in India, you should ensure you have the right type of medical visa before entering the country and should build this extended period into your planning as we cannot expedite your case. Parents considering entering into surrogacy in India must read the following information.

Indian visa and entry clearance requirements

It is important that you understand the requirements of the local Indian authorities if you are considering entering into surrogacy in India.

- Type of visa for foreign nationals intending to visit India for Commissioning Surrogacy and conditions for grant visa for the purpose. (link to: <http://boi.gov.in/content/surrogacy>)
- General Instructions for Registration by Foreigners (link to: <http://boi.gov.in/content/general-instructions-registration-foreigners>)

When applying for a visa to enter India for the purposes of surrogacy you may be asked to provide a letter from the British High Commission explaining the UK rules around surrogacy. You can find a copy of the [British High Commission standard letter for medical visa applications](#) at the end of this guidance.

If you have any questions in relation to these links you should refer them to the appropriate authority in India. **Please note that the British High Commission has no authority to lobby on behalf of parents wanting exceptions to these rules.**

Indian exit clearance

In order to leave India you will need to arrange Indian exit clearance, which will allow your baby to leave India. Once your baby receives a British passport you should apply to the Foreigner's Regional Registration Office (FRRO) in the State where your child was born for Indian exit clearance. You should allow enough time to complete this process, which could take a few weeks.

Please note that the FRRO may wish to be satisfied that you have settled all your bills with the clinic and with the surrogate mother before granting exit clearance. You should therefore obtain letters from both parties confirming this.

Disclaimer

Please note that the Foreign & Commonwealth Office is not responsible for accuracy of the content or reliability of websites to which we link. We cannot guarantee that these links will work all of the time and we have no control over the availability of linked pages.

List of documents required when applying for a passport without registration in surrogacy cases

When applying directly for a passport without registration (only possible where surrogate mother is not married) you must provide these documents in original and accompanied by one set of photocopies. If the documents are in a foreign language they should be accompanied by a certified translation in English.

1. Completed passport application form. You can find the correct application form for the country you are applying in through the online [overseas passport tool](#).
2. A completed [payment authorisation form](#) and two photographs of the child (taken within the last month and consistent with [UK passport photographic standards](#))
3. Documentary proof of the biological father's British nationality other than by descent i.e being born in the UK or naturalised or registered as a British Citizen. The father will have to be eligible for British Citizenship in his own right and not just by descent from a parent. Examples of proof are long birth certificate/registration/naturalisation certificates.
4. Original passports of both commissioning parents.
5. Evidence that you are the biological father. If after discussing your child's application with HMPO it is agreed that DNA evidence is needed, please note that we can only accept DNA test reports from UK organisations accredited by Her Majesty's Court Service which are detailed on [the UK Ministry of Justice website](#). The DNA sample will need to be collected in the presence of an officer from Her Majesty's Passport Service or else a British Embassy or consular officer.)
6. A surrogacy agreement on official headed paper. This should be signed by all parties and dated.
7. Document signed by the surrogate mother which confirms that the surrogate mother gives up parental responsibility and custody of the child. This confirmation should be witnessed by a Notary Public and can only be given by the surrogate mother after the child is born. You should seek legal advice about this. Please note: If this permission is given less than 6 weeks after the birth, you cannot later use it for an application for a parental order.
8. Child's birth certificate issued by local authorities (please submit an original local birth certificate along with the English translation).
9. Photographs of the commissioning parents and the baby from birth to current time.
10. Antenatal medical reports and scans from the surrogacy clinic/hospital covering the entire duration of the pregnancy.
11. Letter from the Head Doctor at the surrogacy clinic setting out the details of the case.
12. Identity documents for the surrogate mother e.g. passports, identity cards, driving licence.
13. **If the surrogate mother is divorced**, provide the marriage certificate and divorce certificates/papers. (please submit original documents along with English translations, please note the translations must be notarised by a public notary).

OR

14. **If the surrogate mother is a widow**, then marriage certificate, husband's death certificate (please submit original documents along with English translations, please note the translations must be notarised by a public notary).

OR

15. **If the surrogate mother has never been married**, then an affidavit stating that she is single (never married), along with documents to support this. In some countries a Certificate of No Impediment (CNI) issued by the Civil Registry Agency may also be required.

List of documents required when registering your child with the Home Office as a British National

You must provide original copies of the following documents.

1. Completed [MN1 form](#)
2. [Surrogacy covering page](#) stapled to the front of the application
3. Covering letter from commissioning parents
4. Evidence that the biological father is related as claimed e.g. DNA test results. (We can only accept DNA test reports from UK organisations accredited by Her Majesty's Court Service which are detailed on [the UK Ministry of Justice website.](#))
5. Surrogacy agreement on official stamp paper (you should seek legal advice about this)
6. Documentary proof of biological father's (commissioning father's) British nationality, e.g. Long birth certificate/registration/ naturalisation certificates
7. Child 's birth certificate issued by local authorities (please submit an original local birth certificate along with the English translation and ensure the document is notarised by the public notary and contains an apostille.)
8. Commissioning parents' British passports



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New Delhi

Consul, India & Bhutan
British High Commission
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The Principal Immigration Officer
Indian High Commission
India House
Aldwych
London WC2 B4NA

01 May 2013

Dear Colleague,

Sub: Application for a Medical visa in support of a surrogacy case

Following an RTI request by the Indian Surrogacy law Centre, I have come to learn of new visa conditions issued by the Ministry of Home Affairs as stated in their letter of 9 July 2012 to Shri Amarendra Khatua, Additional Secretary (PV) MEA ref. F.No.25022/74/2011-F.I

These new conditions stipulate that “a letter from the Embassy of the foreign country in India or the Foreign Ministry of the foreign country should be enclosed with the visa application stating clearly that (a) the country recognises surrogacy and (b) the child/children to be born to the commissioning couple through the Indian surrogate mother will be permitted entry into their country as a biological child/children of the couple commissioning surrogacy.”

The Human Fertilisation and Embryology Act, (HFE. Act 2008) applies to all of the United Kingdom and is the Act which regulates parental orders. Other aspects of Surrogacy are regulated in the UK by the Surrogacy Arrangements Act 1985. For the purpose of this visa application, the United Kingdom recognises surrogacy in India so long as it meets the conditions set out by the UK Human Fertilisation and Embryology Act 2008. The Act allows for a child to be treated in law as the child of a couple if the child is genetically related to at least one of the commissioning couple and no money other than reasonably incurred expenses has been paid in respect of the surrogacy arrangement.

Because of the different scenarios that can arise in inter-country surrogacy, the way that a child born as the result of a surrogacy arrangement through an Indian surrogate mother may be brought into the United Kingdom will depend on individual circumstances. Therefore, we advise parents to seek advice before undertaking surrogacy arrangements.

British commissioning parents seeking nationality documents for a child born through an Indian surrogate mother follow one of the following routes:

Route A If the child gains British citizenship automatically, he/she may freely enter the UK once a British citizen passport has been obtained on his/her behalf. There are three requirements that need to be met for a child born of a surrogacy agreement to be automatically eligible to hold British citizenship. These are:

1. The surrogate mother must be unmarried at the time the child is born.
2. The commissioning father must be the biological father of the child.
3. The commissioning father must be a British citizen, otherwise than by descent.

Where there is no automatic claim to British citizenship, the commissioning parents may apply to UKBA to register the child as a British citizen under section 3(1) or 3(2) of the British Nationality Act 1981. If the surrogate mother is married, once paternity and/or parental responsibility is established, a child can be Registered as a British citizen. Registration under Section 3(1) of the British Nationality Act confers “British citizenship other than by descent” upon the child. This is the same status as if they had been born in the United Kingdom to a British citizen parent.

Route B If the male of the commissioning couple meets the definition of “a parent” for the purpose of the Immigration Rules, there is a route of entry for the child under paragraph 297 of the Immigration Rules as a dependent child. If the surrogate mother is unmarried, the biological father will be considered as the resultant child’s father, so long as he is so identified on official documentation and can prove his connection by way of accredited DNA evidence. Where he cannot pass on British citizenship to the child, but can still establish his paternity to the child and, if the surrogate mother has renounced her parental responsibilities (at least 6 weeks after the birth), it will be open to him to apply for entry clearance on behalf of the child. If successful, this will enable him to bring the child to the UK under Paragraph 297 of the UK Immigration Rules and the child would be granted Indefinite Leave to Enter the UK.

Route C If either of the commissioning couple has a genetic connection with the child, the couple may seek entry clearance to bring the child to the UK to apply for a UK parental order within 6 months of the birth. A parental order reassigns parenthood, extinguishing the parental status of the surrogate parents, and conferring full parental status and parental responsibility on the commissioning parents. A child who is the subject of a parental order made in the UK after 6 April 2010 will become a British citizen from the date of the order if either of the persons who obtained the order is a British citizen.

For each route, parents will need to provide the relevant supporting documents to evidence their application and can only apply once the child is born:

Further information on the UK immigration rules relevant to international **surrogacy** can be found in the UKBA Inter-country surrogacy leaflet:

[//www.ukba.homeoffice.gov.uk/sitecontent/documents/residency/Inter-country-surrogacy-leaflet](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/residency/Inter-country-surrogacy-leaflet)

As the British government recognises surrogacy and makes provisions for the commissioning couple of a child/children born overseas to apply for entry to the United Kingdom, I should be grateful if you would accept this letter, enclosed with applications for medical visas for the purpose of surrogacy, as meeting the requirements as set out under MHA instructions to the MEA of 9 July 2012.

Yours sincerely,

Michaela Williamson

Michaela Williamson
First Secretary



Home Office

UK Border Agency

FORM MN1 - SURROGACY

**APPLICATION FOR REGISTRATION OF A CHILD UNDER 18
AS A BRITISH CITIZEN**

PRIORITY SURROGACY APPLICATION