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### Original Citation

Blyth, Eric (2013) The numbers don't add up" - what is going on with surrogacy arrangements in the UK? In: Motherhood: All Change conference, 9th September 2013, Manchester, UK. (Unpublished)

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# **“The numbers don’t add up” - what is going on with surrogacy arrangements in the UK?**

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“It is estimated that 2,000 births to surrogate mothers took place [in India] last year [2011], with most experts agreeing that Britain is the biggest single source of people who want to become parents in this way. Britain may account for as many as 1,000 births last year in India.” (Bhatia, 2012)

- Data from UK GROs; CAFCASS; surrogacy agencies operating in the UK and media reports indicate that:
  - no. of UK Parental Orders granted following surrogacy have markedly increased – especially in past 2 years (possibly due to changed eligibility criteria introduced in 2010).
  - an increasing proportion involve overseas arrangements, which do not necessarily involve a UK surrogacy agency or result in an application for a PO.
- Presentation considers available evidence, possible reasons for, and implications of, these trends.
- Based on Crawshaw, M., Blyth, E. and van den Akker, O. (2012) The changing profile of surrogacy in the UK - Implications for policy and practice. *Journal of Social Welfare and Family Law*. 34 (3): 265–275.



## Distinction between different forms of surrogacy

Full surrogacy (AKA Host or Gestational surrogacy)	Partial surrogacy (AKA Straight or Traditional surrogacy)
<p>Implantation of embryo created using either:</p> <ul style="list-style-type: none"><li>eggs and sperm of intended parents</li><li>donated egg and/or sperm</li></ul> <p>Since Full surrogacy involves creation of an ex-utero embryo using IVF, in UK it falls within the remit of Human Fertilisation and Embryology Act</p>	<p>Surrogate is the child's genetic mother and gestates the child.</p> <p>Conception usually achieved by means of insemination</p>



## Context: Growing acceptance of surrogacy

- Public opinion
- Regulation/legislation
- Professional practice

## Public opinion

- Brazier Review (1998): seen as an 'accepted' form of assisted reproduction 'across a wide spectrum of opinion'
- Celebrity use and endorsement of surrogacy – and associated high-profile media attention (e.g. Elton John, Nicole Kidman).

## Regulation/legislation 1

- 1984: Warnock Committee - surrogacy presented 'some of the most difficult problems we encountered'
- 1985: Surrogacy Arrangements Act – limited objectives to discourage surrogacy and protect vulnerable women and children through criminalising operation of commercial surrogacy agencies
- 1990: HFE Act – confirmed unenforceability of all surrogacy contracts in the UK
- 1990: HFE Act S30 – transfer of legal parentage:
  - largely the result of serendipity
  - provisions “considerably more complex than they first appeared” (Sackville, 1994)



## Regulation/legislation 2

- 2008: HFE Act extended eligibility for PO applications to couples in a same-sex relationship or 'who are living as partners in an enduring family relationship and are not within prohibited degrees of relationship to each other'
- 2008: HFE Act lifted legal restrictions on not-for-profit agencies enabling them to receive 'reasonable payment' to recoup costs attributable to initiating negotiations with a view to making surrogacy arrangements and compiling information regarding surrogacy

## Regulation/legislation 3

- 2009: HFEA removed advice to clinics – in place since 1992 – that surrogacy could take place ‘only ... where it is physically impossible or highly undesirable for medical reasons for the commissioning mother to carry the child’
- Proposals in Children and Families Bill 2013 to extend entitlement to parental for adoptive parents to IPs
- Border Agency guidance (2013)

## Professional practice

- 1984: BMA - doctor's involvement = 'unethical' (BMA, 1990)
- 1994: 10 centres known by COTS to have provided surrogacy (Blyth, 1998)
- 1996: BMA 'reproductive option of last resort'
- 1998: 23 centres known by COTS to have provided surrogacy + 'a few more [are] doing it and keeping quiet' (Blyth, 1998)
- 1998: Balen & Hayden - 29 (25%) centres providing full surrogacy; 8 (7%) of these also provided partial surrogacy
- 2005: recommendations on surrogacy published by ESHRE
- 2013: recommendations on gestational surrogacy published by ASRM

## Surrogacy provided by UK Licensed Centres (i.e. excluding satellite and transport centres): 2013

	N	%
Full surrogacy and partial surrogacy	25	22.1
Full surrogacy	13	11.5
Partial surrogacy	11	9.7
No surrogacy	63	55.8
No information	1	0.9
TOTAL	113	100

<http://guide.hfea.gov.uk/guide/AllClinics.aspx?x=M>

**Parental Orders Registered 1995–2012**

Year	England/Wales	N. Ireland	Scotland	Total
1995	50	0	2	52
1996	37	0	2	39
1997	33	0	3	36
1998	37	0	2	39
1999	36	0	0	36
2000	40	1	1	42
2001	36	0	0	36
2002	44	0	2	46
2003	45	1	1	47
2004	35	0	4	39
2005	39	1	2	42
2006	47	0	4	51
2007	47	0	4	51
2008	73	0	2	75
2009	73	0	6	79
2010	75	0	8	83
2011	133	1	15	149
2012	192	2	9	203
<b>TOTAL</b>	<b>1072</b>	<b>6</b>	<b>67</b>	<b>1145</b>



## Births Reported by UK Surrogacy Agencies to End 2012

- COTS 854
- Surrogacy UK 71
- British Surrogacy Centre of California reported its 100th birth (August 2013)

## Trends

- Up to 2007, **fewer** POs made than cases reported by UK surrogacy agencies - some children born through surrogacy during this time had their birth incorrectly registered or are being raised by IPs who have neither legal parentage nor legal parental responsibility
- Since 2007, **more** POs made than cases reported by UK surrogacy agencies.
- Comparing 2011 (Crawshaw *et al.*, 2012) and 2012 data, around one third of POs made in 2012 do not involve surrogacy agencies:
  - history of providing support before, during and after arrangements made (van den Akker, 2005)
  - surrogates' endorsement of support (Imrie & Jadvá, 2013)
  - but criticism as 'well meaning amateurs' (McFarlane J, 2007)

## Increasing use of overseas surrogacy

- No legal requirement to record country of origin or citizenship of applicants (IPs), respondent(s) (legal parent[s]) or child
- Before 2007 CAFCAS did not record address of parties
- Manual check of CAFCAS records – (acknowledged be incomplete, identified country of residence of female respondents from 2007
- Between 2007 and 2010, only 2 female respondents with non-UK addresses were recorded



Country address of female respondent (surrogate) - PO applications recorded by CAFCASS April 2010-March 2012

Address/Country	2010-2011	2011-2012	Total
Belgium	1	0	<b>1</b>
Canada	0	1	<b>1</b>
England	62	49	<b>111</b>
Georgia	0	1	<b>1</b>
India	6	12	<b>18</b>
Ireland	1	1	<b>2</b>
Scotland	0	2	<b>2</b>
South Africa	0	1	<b>1</b>
Thailand	1	0	<b>1</b>
Ukraine	3	1	<b>4</b>
United States	9	5	<b>14</b>
Wales	1	1	<b>2</b>
Not specified	3	2	<b>5</b>
<b>Total</b>	<b>87</b>	<b>76</b>	<b>163</b>

## Overseas surrogacy - GRO Data

- England and Wales – births in 58% of POs made in 2012 took place overseas, 26% in 2011, 13% in 2010, 4% in 2009, 2% in 2008 and 0% in 1995, the first year of registration
- Scotland – No overseas births in 2012, 13% in 2011, none prior to that
- Northern Ireland - No overseas births up to end 2012.

## Questions

- Why is there a decrease in the involvement of UK surrogacy agencies and who, if anyone, is filling the apparent gap?
- How many overseas surrogacy arrangements avoid UK legal regulatory provisions?
- How can better-quality information be gathered to inform policy and practice?



## Possible ways forward - recording information about:

- Country of origin, citizenship and address of all parties
- Country of birth of child
- Status of IPs (i.e. married/same-sex relationship/‘enduring family relationship’)
- Involvement of medical services – and location
- Involvement of overseas surrogate
- Whether the surrogacy was full or partial
- Use of donor gametes/ embryos - if so, identity and citizenship of donor(s).

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