

**RETHINKING LEGAL AND REGULATORY FRAMEWORK FOR SURROGACY
THROUGH ASSISTED REPRODUCTIVE TECHNOLOGY IN GHANA AND NIGERIA:
LESSONS FROM THE SOUTH AUSTRALIAN SURROGACY ACT 2019**

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ABSTRACT

Surrogacy issues have been on the front burner of the international community, and many countries in the world (including African countries) are making efforts to regulate surrogacy through assisted reproductive technology. Nigeria's National Health Law 2014 does not have any provision for surrogacy through assisted reproductive technology and the Assisted Reproductive Technology Bill which is at the Nigerian National Assembly since 2016 is yet to be passed into law. Recently, Ghana attempted this through the Registration of Births and Deaths Act, 2020 (Act 1027). The law aims to provide for the registration of births, foetal deaths, and death in the country. It officially recognised surrogacy through the assisted reproductive system. Though Ghanaian law only provided for the registration of birth of children born through surrogacy, it recognises the existence of parties to surrogacy. There has been fear that surrogacy practice can turn into modern-day slavery, and human trafficking, putting the lives of the surrogate mother and child in danger if not properly regulated. This article considers the legal framework for surrogacy through assisted reproductive technology in Nigeria and Ghana through doctrinal research methods. The article examines the South Australian Surrogacy Act 2019 and observes that the law is a model law for surrogacy regulation in Nigeria and Ghana. This article in its recommendation suggests that the South Australian Surrogacy Act 2019 should be used as a model for making surrogacy laws for each of the African countries.

Keywords: Legal, Regulatory, Framework, Surrogacy, South Australia

INTRODUCTION

Surrogacy through Assisted Reproductive Technology is gaining prominence all over the world. It is not as if it has not been in existence but the move to regulate the practice came out of the concern to curb modern slavery, and human trafficking and to protect the parties to such surrogacy agreements. The United Nations, worried about this issue, made recommendations for the regulation of the practice. The report presented by the Special Rapporteur on the sale and sexual exploitation of children to the Human Rights Council

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noted the presence of abusive practices in both unregulated and regulated contexts and provided analysis and recommendations on implementing the prohibition of the sale of children as it relates to surrogacy.²

The United Nations opines that surrogacy as a reproductive practice is on the rise. It refers to a form of third-party reproductive practice in which intending parent(s) contract a surrogate mother to give birth to a child. While modern practices of surrogacy offer new reproductive opportunities, they also introduce new legal and ethical dilemmas. Furthermore, the international regulatory vacuum that exists with international surrogacy arrangements leaves children born through this method vulnerable to breaches of their rights, and the practice may often amount to the sale of children.³

This article seeks to address the non-existence of a robust law and regulation on surrogacy through assisted reproductive technology in Nigeria and Ghana by drawing lessons from the South Australia Surrogacy Act 2019. South Australia is one of the eight provinces in Australia including the Australian capital,⁴ and consists of twenty-one cities.⁵ The Act applies to these twenty-one cities.

This article has seven sections, the first section is the introduction, the second section discusses surrogacy and assisted reproductive technology as provided for by the statutes, the third section discusses surrogacy regulation in Ghana, the fourth section discusses surrogacy regulation in Nigeria, the fifth section discusses surrogacy regulation in South Australia, the sixth section discusses lessons learnt from the South Australia surrogacy statutes and the seventh section is the conclusion.

²Surrogacy and sale of children, a Side event of the UN Special Rapporteur on the sale and sexual exploitation of children with the support of the Permanent Mission of Uruguay, the Permanent Mission of Australia, and the Permanent Delegation of the European Union
https://www.ohchr.org/sites/default/files/Documents/Issues/Children/SR/Flyer_Surrogacy.pdf accessed 13 July 2022.

³Surrogacy, Special Rapporteur on the sale and sexual exploitation of children.
<https://www.ohchr.org/en/special-procedures/sr-sale-of-children/surrogacy> accessed 13 July 2022.

⁴ The Australian states are Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria, and Western Australia.

⁵ The cities are Adelaide, Ceduna, Clare, Coober Pedy, Gawler, Goolwa, Iron Knob, Leigh Creek, Loxton, Millicent, Mount Gambier, Murray Bridge, Naracoorte, Oodnadatta, Port Adelaide Enfield, Port Augusta, Port Lincoln, Port Pirie, Renmark, Victor Harbor, and Whyalla.

SURROGACY AND ASSISTED REPRODUCTIVE TECHNOLOGY

There have been several discussions by authors⁶ on the issue of surrogacy and assisted reproductive technology, it is, however, important to state here that this section is not about a review of the literature but to discuss what the law states on surrogacy and assisted reproductive technology. Three countries are in the discussion here; Nigeria, Ghana, and South Australia. While Nigeria has no regulation on surrogacy and assisted reproductive technology, Ghana recognises surrogacy and assisted reproductive technology through her Registration of Births and Deaths Act, of 2020. South Australia, with its robust law on surrogacy and assisted reproductive technology has the model law we are considering here. Therefore, the discussion on the meaning of surrogacy and assisted reproductive technology comes from Ghanaian and South Australian Laws.

The South Australian Surrogacy Act⁷ did not define surrogacy but defines surrogacy agreement to mean an agreement (whether a lawful surrogacy agreement or otherwise) under which— (a) a woman agrees to— (i) become pregnant or attempt to become pregnant; and (ii) surrender parentage or custody of, or rights concerning, a child born as a result of the pregnancy to another person or persons; or (b) a pregnant woman agrees to surrender parentage or custody of, or rights concerning, a child born as a result of the pregnancy.⁸

Section 48 of the Ghanaian law⁹ defines surrogacy to mean an embryo formed from the egg and sperm of persons other than a surrogate mother¹⁰ and the partner or husband of that surrogate mother is implanted into the surrogate mother or a gamete¹¹ from a person

⁶ For instance, see Chris Adomako-Kwakye and Ernest Owusu-Dapaa, 'The Challenges for Surrogate Mothers In Ghana: Recommendations for The Legal Protection of their Rights' (2020) (39)4, *Medicine and the Law*. 603.

Marcia C. Inhorn and Daphna Birenbaum-Carmeli 'Assisted Reproductive Technologies and Culture Change' (2008) 37, *Annual Review of Anthropology*. 178. DOI: 10.1146/annurev.anthro.37.081407.085230., and Samson O Koyonda, 'Assisted reproductive technologies in Nigeria: placing the law above medical technology' (2001) (34)2, *The Comparative and International Law Journal of Southern Africa*, 260.

⁷ 2019

⁸ Section 4(1) South Australia Surrogacy Act 2019.

⁹ Registration of Births and Deaths Act, 2020 (Act 1027) Law of the Republic of Ghana

¹⁰ A surrogate mother is defined by the law to mean a woman who has accepted under a surrogacy agreement to carry a foetus for the period of the pregnancy and give birth to a baby at the end of the period on behalf of another woman or the intended parent.

¹¹ Gametes are an organism's reproductive cells. They are also referred to as sex cells. Female gametes are called ova or egg cells, and male gametes are called sperm.

other than the partner or husband of a surrogate mother is introduced into the surrogate mother to fertilise the egg of that surrogate mother to enable the surrogate mother to carry the foetus for the period of the pregnancy and give birth at the end of the period on behalf of another woman of the intended parent.¹² Today's modern surrogacy exists through assisted reproductive technology.

On Assisted reproductive technology, section 3 of the South Australian Assisted Reproductive Treatment Act 1988¹³ defines assisted reproductive treatment as any medical procedure directed at fertilisation of a human ovum by artificial means and includes an in vitro fertilisation procedure.¹⁴ Section 48 of the Registration of Births and Deaths Act, 2020¹⁵ defines assisted reproductive birth as the use of modern technological advancements including fertility medication, artificial insemination, and in vitro fertilisation to cause reproduction and childbirth other than orthodox means. Human reproductive material is defined to mean: (a) a human embryo; (b) human semen; (c) a human ovum.¹⁶

In all the definitions, it can be deduced that assisted reproductive technology has enhanced modern surrogacy practice to benefit persons who are unable to give birth through natural means.

SURROGACY REGULATION IN GHANA

The Ghanaian government recognises surrogacy through assisted reproductive technology in 2020.¹⁷ Section 22 of the Registration of Births and Deaths Act, 2020 (Act 1027) provides for the registration of assisted reproductive births.

Section 22 of the law has thirteen subsections. It recognises and accepts the engagement of surrogates by an intended parent.¹⁸ The law stipulates that an application should be

¹² *Ibid.*

¹³ South Australia Assisted Reproductive Treatment Act 1988.

¹⁴ *Ibid.*

¹⁵ (Act 1027) Law of the Republic of Ghana

¹⁶ Section 3 of South Australia Assisted Reproductive Treatment Act 1988

¹⁷ The description of the law says that It is an Act to provide for the registration of births, foetal deaths, and deaths in the country, the decentralization of the Births and Deaths Registry to improve the collection and collation of statistics for national development, and for related matters.

¹⁸Section 22(1) of the law provides that an intended parent may engage the services of a person to give the intended parent, a child through surrogacy.

However, an intended parent has been defined by section 48 to mean a person who desires to be a parent through surrogacy or any other assisted reproductive birth arrangement.

made to the High Court of Ghana for a pre-birth parental order within twelve weeks of introducing the embryo or gamete into the surrogate mother to be named as the parent of a child born through surrogacy or any other assisted reproductive birth if the birth occurs within twenty-eight weeks of the order of the High Court. The parental order may be for either the intended parent or surrogate mother or both parents of a child.¹⁹

The Law goes further to provide that where the High Court is convinced of the evidence of parentage and the existence of surrogacy, the Court is empowered to issue a pre-birth parental order naming the legal parent of the unborn child and a copy of the order will be issued to four parties i.e the District Registrar of the district in which the child will be born, the intended parent, the surrogate mother and the hospital where the child is born if the birth occurs at a hospital facility.²⁰ However, where the High Court order is absent in this respect, a woman who gives birth to such a child will be registered as the mother.²¹

The law further provides that after conforming to subsection 2 of section 22, a woman who gives birth to a child has the right to register the child.²² The Registration Officer is under the duty to register the child with the information provided.²³ It is also a requirement for the District Registrar or the hospital to register the birth of the child born through surrogacy or

¹⁹ Section 22(2)

²⁰ Section 22(3) provides that:

Where the High Court is convinced of the evidence of parentage and the existence of surrogacy, the High Court shall issue a pre-birth parental order naming the legal parent of the unborn child, and a copy of the order shall be issued to:

- (a) the District Registrar of the district in which the child will be born,
- (b) the intended parent,
- (c) the surrogate mother and the hospital where the child is born, if the birth occurs at a hospital facility.

²¹ Section 22(4)

²² Section 22(5) provides that:

Subject to subsection (2), a woman who gives birth to a child shall:

- (a) Have the right to register the child and
- (b) Inform the Registration Officer in the district in which the child is born of
 - (i) the name of the child
 - (ii) the name of the father of the child, and any other information required for the registration.

²³ Section 22(6) provides that the Registration Officer shall on receipt of the information required under paragraph (b) of subsection (5), proceed to register the birth of the child by the information provided.

other assisted reproductive birth following the pre-birth order.²⁴ There is also post-birth parental order or substitute parental order.²⁵

It is also provided that where the High Court approves an application made under subsection (8), the High Court shall issue a post-birth parental order or substitute parentage order naming the intended parent or surrogate mother as the legal parent of the child and a copy of the order shall be immediately served on the District Registrar.²⁶ The post-birth parental order or substitute parental order will take the form of an adoption proceeding and should be done within 28 days of the birth of the child.²⁷ In fulfilling the conditions of post-birth parental order or substitute parental order, the District Registrar will strike out the original birth record and make the necessary change in his register of birth.²⁸ The District Registrar is under the duty to keep the original birth record struck out in a confidential place and make it accessible for the child when he or she attains the age of twenty-one²⁹ and a new birth record opened under this section shall supersede any other birth record made earlier.³⁰

From the above, section 22 of the Registration of Births and Deaths Act, 2020 (Act 1027) is about the registration of birth of children born of surrogacy or through other assisted

²⁴ Section 22(7) provides that:

The District Registrar and where appropriate, the hospital where the child is born, shall

- (a) Register or cause to be registered in the district office of the Registry, the birth arising from the surrogacy or other assisted reproductive birth under the pre-birth parental order, and
- (b) Enter or cause to be entered in the register of births, the name of the child provided by either the intended parent or surrogate mother, or both under subsection (2).

²⁵ Section 22(8) provides that where a child is already born, an intended parent or surrogate mother may apply to the High Court for a post-birth parental order or substitute parental order.

²⁶ Section 22(9).

²⁷ Section 22(10) provides that a post-birth parental order or substitute parentage order issued under subsection (9) shall, in substance, be in the form of an adoption proceeding and shall be lodged at the High Court at least twenty-eight days after the birth of the child.

²⁸Section 22(11) provides that:

The District Registrar shall, on receipt of a sealed substitute parentage order from the High Court, strike out or cause to be struck out the original birth record, and open or cause to be opened a new birth record with the intended parent or surrogate mother named as the parent of the child, following the order of the High Court.

²⁹ Section 22(12) provides that the District Registrar shall keep the original birth record struck out under subsection (11) in a confidential place and that the birth record shall be made accessible to the child whose birth entry was made only when that child attains the age of twenty-one years.

³⁰ Section 22(2)

reproductive systems. The purpose of this law is not for the regulation of surrogacy and other assisted reproductive births but the registration and recording of the children born of it. So, there is no law regulating surrogacy and other assisted reproductive technology in Ghana, what exists is the official recognition of surrogacy without regulation.

The Ghanaian law as mentioned above is a law for the registration of birth deaths recognising the birth and death of a child born through surrogacy through assisted reproductive technology. There is no provision in the law stating the legal rights and duties of the Surrogate mother, legal rights of the child or children born through surrogacy, rights, and duties of the intended parents, duties, and obligations of the Fertility Clinic or hospital in which the process took place and providing adequate regulations in adopting either commercial or altruistic surrogacy.

SURROGACY REGULATION IN NIGERIA

Nigeria's National Health Act 2014 does not have any provision for surrogacy through assisted reproductive technology. The Assisted Reproductive Technology Bill 2016 which is before the Nigerian National Assembly since 2016 is yet to be passed into law. The only provision which is in the National Health Act 2014 prohibits reproductive, therapeutic cloning of humankind.³¹

Today, Nigeria has no regulation on surrogacy and assisted reproductive technology. Though surrogacy practice exists in Nigeria, the practice is shrouded in secrecy and only comes to light when there are conflicts among the parties. This can be seen in the case of a US-based couple who were using police to forcibly take twins from a Nigerian surrogate mother despite failing to abide by the terms of their agreement.³² The case mentioned here

³¹ Section 50 of the National Health Act 2014 provides that:

- (1) A person shall not:
 - (a) manipulate any genetic material, including genetic material of human gametes, zygotes, or embryos; or
 - (b) engage in any activity including the nuclear transfer or embryo splitting for the cloning of human beings;
 - (c) Import or export of human zygotes or embryos.
- (2) A person who contravenes or fails to comply with the provision of this section commits an offence and is liable on conviction to imprisonment for a minimum of five years with no option of fine.

³² 'How US-based Couple Are Using Police, Others To Forcibly Take Twins From Nigerian Surrogate Mother Despite Defaulting On Agreement'
<https://saharareporters.com/2022/04/05/how-us-based-couple-are-using-police-others-forcibly-take-twins-nigerian-surrogate-mother> accessed 7 August 2022.

is one of the many that are not known to the public. There is so much human rights abuse, modern-day slavery, and human trafficking which need urgent regulatory attention. Presently, there is no judicial pronouncement on this form of contract in Nigeria.

SURROGACY REGULATION IN SOUTH AUSTRALIA

The South Australia Act, of 1834 created the Province of South Australia, built according to the principles of systematic colonisation, with no convict settlers; after the colony nearly went bankrupt, the South Australia Act of 1842 gave the British Government full control of South Australia as a Crown Colony. South Australia is a state of Australia in the southern central part of the country. It covers some of the driest parts of the continent; with a total land area of 983,482 square kilometres (379,725 square metres), it is the fourth largest of Australia's six states and two territories.³³

The state's origins are unique in Australia as a freely-settled, planned British province, rather than as a convict settlement. Official settlement began on 28 December 1836, when the state was proclaimed at The Old Gum Tree by Governor John Hindmarsh.³⁴

The first city/town to be established was Kingscote, Kangaroo Island, established in 1836. The guiding principle behind settlement was that of systematic colonisation, a theory espoused by Edward Gibbon Wakefield that was later employed by the New Zealand Company. The aim was to establish the province as a centre of civilisation for free immigrants, promising civil liberties and religious tolerance.³⁵

Surrogacy Act 2019, which came into effect on 1 September 2020, is the current law regulating surrogacy practice in South Australia. The Law in its preamble describes itself as:

An Act to recognise and regulate certain forms of surrogacy in South Australia, to ensure commercial surrogacy remains unlawful in South Australia, to make related amendments to the Assisted Reproductive Treatment Act 1988, the Births, Deaths and Marriages Registration Act 1996, and the Family Relationships Act 1975, and for other purposes.

The Law itself has six parts and thirty-two sections, Part 1 deals with the preliminary and interpretation of terms, part 2 sets out principles that are to be applied concerning the operation of the Act and lawful surrogacy agreements, part 3 sets out the scheme for

³³ Australia has several political divisions that include New South Wales, Queensland, Northern Territory, Western Australia, South Australia, Victoria, the Australian Capital Territory, and Tasmania. It has six states and two territories. The territories are Northern Territory and Australian Capital Territory.

³⁴ 'South Australia History' https://www.familysearch.org/en/wiki/South_Australia_History accessed 5 August 2022,

³⁵ *Ibid.*

surrogacy agreements that are lawful and legally recognised, part 4 sets out the role of the Court concerning lawful surrogacy agreements (and, in particular, the making of parentage orders for children born as a result of such agreements), part 5 provides that all other surrogacy agreements are unlawful in the South Australia State, and creates offences relating to surrogacy, and part 6 contains miscellaneous provisions relating to surrogacy and the operation of the Act, including provisions protecting the privacy of children born as a result of a surrogacy agreement and the power to make regulations under the Act.³⁶ The related amendments and transitional provisions have five parts and eleven sections.³⁷

The Act provides a scheme allowing for certain forms of surrogacy in South Australia. However, all other forms of surrogacy remain unlawful, and the Act provides for several offences relating to surrogacy.³⁸

Principles of Surrogacy

The law recognises the best interest of a child as paramount.³⁹ It further provides for surrogacy principles as follows⁴⁰:

- (1) The following principles (the surrogacy principles) apply to the lawful practice of surrogacy in South Australia:
 - (a) the human rights of all parties to a lawful surrogacy agreement, including any child born as a result of the agreement, must be respected;
 - (b) the surrogate mother under a lawful surrogacy agreement should not be financially disadvantaged as a result of her involvement in the lawful surrogacy agreement.
- (2) The Minister, the Court, and each person or body engaged in the administration of this Act must exercise their powers and perform their functions to give effect to the surrogacy principles.

³⁶ Section 3(2) Surrogacy Act 2019

³⁷ The related amendments and transitional provisions are: (i) Amendment of Reproductive Treatment Act 1988

(ii) Amendment of Births, Deaths, and Marriages Registration Act 1996 (iii) Amendment of Family Relationships Act 1975 (iv) Transitional and saving provisions, etc.

³⁸ Section 3(1) Surrogacy Act 2019.

³⁹ Section 6 Surrogacy Act provides that:

- (1) The best interests of any child born as a result of a lawful surrogacy agreement are to be the paramount consideration in respect of the administration and operation of this Act.
- (2) To avoid doubt, the requirement under this section applies to the Court.

⁴⁰ Section 7 Surrogacy Act 2019.

(3) However, the surrogacy principles do not displace, and cannot be used to justify the displacement of, section 6.

The section above recognises the human rights of all parties to the surrogacy agreement, including the child born out of it. It recognises the right of the surrogate mother to adequate finance. It also empowers all persons engaged in the administration of this particular law to give effect to the principles through the performance of their functions.

The law however omitted to mention how a surrogate mother would be adjudged to be financially disadvantaged considering the fact such surrogacy is an altruistic one.

Surrogacy Agreement

On surrogacy agreement, the law provides that except as may be provided for in the Act, a surrogacy agreement (however described) is void and of no effect.⁴¹ A surrogacy agreement under the Act that complies with the requirements under the section, and any regulations made for the section, will be taken to be a lawful surrogacy agreement.⁴²

On the parties to a lawful surrogate agreement, the law specifies the following persons:⁴³

- (i) a woman (the surrogate mother) who is to have a child or children for the lawful surrogacy agreement;
- (ii) a person, or both persons, (an intended parent) on whom parentage of the child or children born as a result of the lawful surrogacy agreement will be conferred in accordance with the Act.

Under the law, the following conditions must be satisfied by, or in respect of, the surrogate mother under a lawful surrogacy agreement:⁴⁴

- (i) the surrogate mother must be 25 years of age or older at the time the lawful surrogacy agreement is entered;
- (ii) the surrogate mother must not have impaired decision-making capacity in respect of the decision to enter a lawful surrogacy agreement;⁴⁵

⁴¹ Section 9 Surrogacy Act 2019.

⁴² Section 10(1) Surrogacy Act 2019.

⁴³ Section 10(2) Surrogacy Act 2019/

⁴⁴ Section 10(2) Surrogate Act 2019.

⁴⁵ Section 4(4) Surrogate Act 2019 provides that:

- (iii) the surrogate mother must be an Australian citizen or a permanent resident of Australia;
- (iv) the surrogate mother must not be pregnant at the time the lawful surrogacy agreement is entered;
- (v) the surrogate mother must, before entering the lawful surrogacy agreement, undergo counseling of a kind required by section 14;
- (vi) the surrogate mother must provide to each intended parent a criminal history report in respect of the surrogate mother provided by South Australia Police, or the Australian Crime Commission, or an Australian Crime Commission accredited agency or broker, within 12 months before entering a lawful surrogacy agreement;
- (vii) the surrogate mother must comply with any other requirements set out in the regulations.

As laudable as this section looks, it only provides for two parties to a surrogate agreement. It is important to mention here that the parties to this agreement are three parties which include the fertility clinic or the professional carrying out the procedures. So, the law should have provided for a tripartite agreement among the surrogate mother, the intended parents, and the professional or fertility clinic carrying out the procedure.

Surrogacy Cost

On the cost of surrogacy, the law provides that notwithstanding any other Act or law, no payment of any form may be made (whether to a surrogate mother, an intended parent, or

For the purposes of this Act, a person will be taken to have impaired decision-making capacity in respect of a particular decision if the person is not capable of—

- (a) understanding any information that may be relevant to the decision (including information relating to the consequences of making a particular decision); or
- (b) retaining such information; or
- (c) using such information in the course of making the decision, or (d) communicating their decision in any manner,

however—

- (e) a person will not be taken to be incapable of understanding information merely because the person is not able to understand matters of a technical or trivial nature;
- (f) a person will not be taken to be incapable of retaining information merely because the person can only retain the information for a limited time;
- (g) a person may fluctuate between having impaired decision-making capacity and full decision-making capacity; (h) a person's decision-making capacity will not be taken to be impaired merely because a decision made by the person results or may result, in an adverse outcome for the person.

any other person or body) in relation to a lawful surrogacy agreement except payment of the following kinds (the reasonable cost):⁴⁶

(a) such reasonable costs as may be incurred, or likely to be incurred, in respect of the lawful surrogacy agreement, being:

- (i) costs relating to the pregnancy (including any attempt to become pregnant) that is the subject of the lawful surrogacy agreement; and
- (ii) costs relating to the birth of a child born as a result of the lawful surrogacy agreement; and
- (iii) costs relating to the postnatal care of a child born as a result of the lawful surrogacy agreement; and
- (iv) medical, counselling, or legal services provided in relation to the lawful surrogacy agreement; and
- (v) reasonable out-of-pocket expenses incurred by the surrogate mother in relation to the lawful surrogacy agreement; and
- (vi) any other costs, or costs of a kind, prescribed by the regulations for the purposes of this paragraph; or

(b) payments representing a loss of income of a kind set out in the regulations; or

(c) any other payment of a kind relating to the lawful surrogacy agreement of a kind prescribed by the regulations.

This section further provides that a provision of a lawful surrogacy agreement that is inconsistent with the above is void and of no effect and nothing in the section authorises regulations to be made that allow for commercial surrogacy (however described).⁴⁷ The parties to a lawful surrogacy agreement may, by an instrument in writing signed by each

⁴⁶ Section 11 Surrogacy Act 2019.

Regulation 5 of the Surrogacy Regulations 2020 provides that:

For the purposes of section 11(1)(b) of the Act, payments representing a loss of income of the surrogate mother of the following kinds are prescribed in relation to the pregnancy to which the lawful surrogacy agreement relates:

- (a) loss of income during any period of the pregnancy when the surrogate mother was unable to work due to attendance at medical appointments relating to the pregnancy;
- (b) loss of income during any period of the pregnancy when the surrogate mother was unable to work on medical grounds relating to the pregnancy;
- (c) loss of income during any period within 2 months after the end of the pregnancy when the surrogate mother was unable to work on medical grounds relating to the end of the pregnancy.

⁴⁷ Section 11(2) and (3) Surrogacy Act 2019.

party, vary a lawful surrogacy agreement.⁴⁸ The above section seems to be exhaustive on surrogacy cost considering the fact that the law does not recognise commercial surrogacy.

Enforcement of Surrogacy Agreement

Section 13(1) of the Surrogacy Act 2019 provides that except as provided for under the law, no other surrogacy agreement is enforceable. This means that any agreement not in conformity with the law is not enforceable. It however provides that a provision of a lawful surrogacy arrangement relating to the payment or reimbursement of reasonable surrogacy costs (being costs that have, in fact, been incurred) is enforceable in a court of competent jurisdiction.⁴⁹

The law goes further to provide that the enforceability as stated above would not apply if the surrogate mother refuses or fails to relinquish the custody or rights in relation to a child born as a result of the lawful surrogacy arrangement to the intended parents; or does not consent to the making of an order under section 18.⁵⁰

The above provisions intend to discourage a surrogate mother from failing to keep her side of the agreement which will still be enforceable in a court of law. It is however observed that the law did not provide for the situation where the intended parents are unwilling to take custody of the child.

Counselling of Parties to Surrogacy

Section 14 of the Surrogacy Act 2019 provides that parties to surrogacy arrangements must go for counselling before entering into such a lawful surrogacy agreement. The surrogate mother is required under the law to go for counselling.⁵¹ The intended parents are also

⁴⁸ Section 12 Surrogacy Act 2019.

⁴⁹ Section 13(2) Surrogacy Act 2019.

⁵⁰ Section 13(3) Surrogacy Act 2019. Section 18 provides for court orders relating to lawful surrogacy agreements.

⁵¹ Section 14(1) provides that:

A surrogate mother must, before entering a lawful surrogacy agreement, undergo counselling regarding the implications of the agreement that complies with the following provisions:

- (a) the counselling must be provided by an accredited counsellor;
- (b) the counselling must be consistent with—
 - (i) any guidelines related to such counselling published by the Australian and New Zealand Infertility Counsellors Association; and
 - (ii) any relevant guidelines published by the National Health and Medical Research Council;
- (c) the counselling must comply with any requirements set out in the regulations for the purposes of this paragraph.

required to go for counselling.⁵² The accredited counsellor must be a member, or be eligible for membership, of the Australian and New Zealand Infertility Counsellors Association subcommittee of the Fertility Society of Australia.⁵³

The above provision for counselling is commendable because parties may not understand what they are going into until the events continue to unfold. The counselling is to prepare the parties for their future roles as surrogate mothers and intended parents. It is also important for them to know the full implication of their relationship under the law before entering into the surrogacy agreement.

The costs of counselling under this section (including the costs of counselling the surrogate mother) are to be met by the intended parents. The reasonable costs of counselling under this section (including the costs of counselling the surrogate mother) may be recovered against the intended parents as a debt in a court of competent jurisdiction.⁵⁴

The law makes it mandatory for the intended parents to ensure that counselling is made available to surrogate mothers during pregnancy and after birth. Section 15 provides that:

- (1) The intended parents under a lawful surrogacy agreement must take reasonable steps to ensure that—
 - (a) the surrogate mother and the spouse or domestic partner of the surrogate mother (if any) are, in accordance with any requirements in the regulations, offered counselling by an accredited counsellor—
 - (i) during any period in which a surrogate mother is attempting to become pregnant for the purpose of a lawful surrogacy agreement; and

⁵² Section 14(2) provides that:

Each intended parent must, before entering a lawful surrogacy agreement, undergo counselling regarding the implications of the agreement that complies with the following provisions:

- (a) the counselling must be provided by an accredited counsellor;
- (b) at least 1 session of the counselling must be provided to each intended parent in the absence of the other;
- (c) the counselling must be consistent with—
 - (i) any guidelines related to such counselling published by the Australian and New Zealand Infertility Counsellors Association; and
 - (ii) any relevant guidelines published by the National Health and Medical Research Council;
- (d) the counselling must comply with any requirements set out in the regulations for the purposes of this paragraph.

⁵³ Regulation 4 of the Surrogacy Regulations 2020.

⁵⁴ Section 14(3) and (4) of the Surrogacy Act 2019.

- (ii) during any pregnancy to which a lawful surrogacy agreement relates; and (iii) during the period of 6 months after the birth of the child; and
- (b) if the surrogate mother, spouse, or domestic partner of the surrogate mother undergoes such counselling—the reasonable costs associated with the counselling are paid by the intended parents.
- (2) If the intended parents under a lawful surrogacy agreement refuse or fail to comply with subsection (1), each intended parent is guilty of an offence. Maximum penalty: \$5 000.
- (3) The reasonable costs of any counselling under this section may be recovered against the intended parents as a debt in a court of competent jurisdiction.

Rights of surrogate mother to manage pregnancy and birth

The law provides for the rights of a surrogate mother to manage pregnancy and birth when it provides under section 16 as follows:

- (1) A surrogate mother has the same rights to manage her pregnancy and birth as any other pregnant woman.
- (2) A provision of a lawful surrogacy agreement that is inconsistent with subsection (1), or that purports to require the consent of the intended parents in relation to the management of the surrogate mother's pregnancy, the health of the unborn child to which the lawful surrogacy agreement relates, or the birth of a child to which the lawful surrogacy agreement relates, is void and of no effect.
- (3) This section applies despite any provision of a lawful surrogacy agreement to the contrary.

In essence, the surrogate mother has the absolute right to manage her pregnancy and birth even where the lawful surrogacy agreement says otherwise. It means that any lawful surrogacy agreement restricting the rights of the surrogate mother in this regard will not stand.

Medical decisions affecting surrogate mother or child

On medical treatment affecting a surrogate mother or child, section 17 of the Surrogacy Act 2019 provides that:

- (1) For the purposes of this Act, the Consent to Medical Treatment and Palliative Care Act 1995, and any other Act or law, a question relating to any medical treatment to be provided to a surrogate mother, or to an unborn child

to which a lawful surrogacy agreement relates, is to be determined as if the lawful surrogacy agreement did not exist.

(2) Nothing in this Act limits the operation of an advance care directive under the Advance Care Directives Act 2013.

The above provision means that the Consent to Medical Treatment and Palliative Care Act 1995 and any other Act or law should treat the surrogate mother as being responsible for herself and the baby.

Court orders relating to a lawful surrogacy agreement

The law gives the court the power to make orders relating to the surrogacy agreement, orders as to the welfare of the child of a lawful surrogacy agreement.⁵⁵ Application for such orders must be made between thirty days to twelve months from the birth of the child of lawful surrogate agreement. The court is also given wide power to allow a later time if it is in the best interest of the child.⁵⁶ The law makes it mandatory that Applicant must provide to the Court (whether in an application or in proceedings under section 18) such of the following information as is known to the applicant: (a) the identity of the donor of any human reproductive material used in relation to the lawful surrogacy agreement and resulting in the birth of a child (being a donor who is not the surrogate mother or an intended parent); (b) any other information prescribed by the regulations.⁵⁷ The section is generally on the welfare of the child of a lawful surrogacy agreement.⁵⁸ Section 19 however gives the court

⁵⁵ Section 18(1) of the Surrogacy Act 2019 provides that:

Subject to this section, the Court may, on an application by 1 or both of the intended parents under a lawful surrogacy agreement, make 1 or more of the following orders in relation to a child born as a result of the lawful surrogacy agreement:

(a) an order declaring—

(i) that the relationship between the child and the intended parent or parents is as specified in the order; and

(ii) that the relationship between the child and the surrogate mother is as specified in the order; and (

iii) that the relationships of all other persons to the child are to be determined according to the operation and effect of the preceding subparagraphs;

(b) an order declaring that the name of the child will be as specified in the order;

(c) such consequential or ancillary orders as the Court considers appropriate.

⁵⁶ Section 18(2) of the Surrogacy Act 2019.

⁵⁷ Section 18(3) of the Surrogacy Act 2019.

⁵⁸ See section 18 generally.

Regulation 6 of the Surrogacy regulations 2020 provides that:

(1) For the purposes of section 18(7) of the Act, the following provisions of Part 3 of the Act are prescribed:

(a) section 10(3)(a) to (f) (inclusive);

(b) section 10(4)(a) to (e) (inclusive);

(c) section 10(4)(g);

the power to revoke an order made under section 18 of the Surrogacy Act 2019.⁵⁹ The court may also make an order for separate representation of the child of a lawful surrogacy agreement.⁶⁰

Notification to the Registrar of Births, Deaths, and Marriages

The law provides that the Court Registrar must, as soon as it is possible, after the Court order under section 18 or 19 relating to a child, give the Registrar of Births, Deaths, and Marriages, a written notice of the following information:⁶¹

- (i) the date of the order;
- (ii) the full name, address, and occupation of the birth mother of the child;
- (iii) the full name, address, and occupation of the intended parent or parents of the child under the relevant lawful surrogacy agreement;
- (iv) the name by which the child is known before, and is to be known after, the order becomes effective;
- (v) details of the date and place of birth of the child;
- (vi) the terms of any relevant consequential or ancillary orders made;
- (vii) if known, the identity of the donor of any human reproductive material used in relation to the relevant lawful surrogacy agreement and resulting in the birth of a child (being a donor who is not the birth mother or an intended parent);
- (viii) if known, such other information as may be reasonably required by the Registrar of Births, Deaths, and Marriages for the purposes of registration of the birth of the child to whom the order relates.

(d) section 10(5)(a) to (d) (inclusive).

(2) For the purposes of section 18(9)(c) of the Act, circumstances in which the Court is satisfied that the other intended parent has impaired decision-making capacity are prescribed.

⁵⁹ See section 19 generally.

⁶⁰ Section 20 provides that:

(1) In proceedings before the Court under this Act relating to a child born as a result of a lawful surrogacy agreement, the Court may, if it thinks it appropriate to do so—

(a) an order that the child is to be separately represented in the proceedings; and
(b) make any other orders the Court considers necessary or appropriate to secure that separate representation.

(2) A legal practitioner representing a child in proceedings under this Act must act in the best interests of the child, having regard to any evidence reasonably available to the legal practitioner.

⁶¹ Section 21 of the Surrogacy Act 2019.

The law provides that the records of the proceedings relating to an order under sections 18 and 19 will not be available for inspection except if the court authorises such.⁶²

Offences relating to surrogacy agreements

Commercial surrogacy is an offence under section 23(1)-(3) of the Surrogacy Act 2019. It provides that:

- (1) A person who enters, or purports to enter, a commercial surrogacy agreement is guilty of an offence. Maximum penalty: Imprisonment for 12 months.
- (2) In proceedings for an offence against this section, the prosecution need not prove that a woman became pregnant, or a child was or is to be born, pursuant to the commercial surrogacy agreement.
- (3) For the purposes of this section, a reference to payment will be taken not to include a reference to payment of reasonable surrogacy costs.

The section describes the commercial surrogacy agreement to mean a surrogacy agreement that provides for or purports to provide for, a person to receive payment for any of the following: (a) entering, or agreeing to enter, the surrogacy agreement; or (b) giving up a child, or any rights in respect of a child, born as a result of the surrogacy agreement; or (c) consenting to the making of an order under this Act relating to a child born as a result of the surrogacy arrangement.⁶³

It is also an offence to arrange a commercial surrogacy agreement for another person. The maximum punishment is imprisonment for twelve months.⁶⁴ It is an offence to induce a person to enter into a surrogacy agreement. Section 25(1)-(3) provides that:

⁶² Section 22 provides that "Except as may be authorised by the Court, the records of proceedings relating to an order under section 18 or 19 will not be open to inspection".

⁶³ section 23(4) of the Surrogacy Act 2019.

⁶⁴ See section 24 of the Surrogacy Act 2019.

Regulation 7 of the Surrogacy regulation 2020 provides that:

For the purposes of section 24(2)(b) of the Act, the following acts are prescribed:

- (a) a legal practitioner negotiating, or arranging, or obtaining the benefit of, a lawful surrogacy agreement on behalf of an intended parent or a birth mother;
- (b) a legal practitioner or an accredited counsellor acting in accordance with the requirements of the Act;
- (c) a person registered under the Assisted Reproductive Treatment Act 1988 for the provision or proposed provision of assisted reproductive treatment in accordance with that Act.

- (1) A person who, by threat of harm, or by dishonesty or undue influence, induces another to enter a surrogacy agreement is guilty of an offence. Maximum penalty: Imprisonment for 5 years.
- (2) A person who, for valuable consideration, induces another to enter into a surrogacy agreement is guilty of an offence. Maximum penalty: Imprisonment for 2 years.
- (3) In proceedings for an offence against this section, the prosecution need not prove that a woman became pregnant, or a child was or is to be born, pursuant to the surrogacy agreement.

In essence, all parties to a surrogacy agreement must enter into it out of their free will. It is an offence to publish⁶⁵ an advertisement, statement, notice, or other material that seeks, or purports to seek, the agreement of a person to act as a surrogate mother for valuable consideration; or states, or implies, that a person is willing to act as a surrogate mother for valuable consideration. The maximum penalty for committing such offence is \$10 000.⁶⁶ In proceedings for the offence, the prosecution doesn't need to prove that a person did, in fact, as a surrogate mother, or that a surrogacy agreement (whether a lawful surrogacy agreement or otherwise) was, in fact, entered.⁶⁷

Registration of Child's birth

The law, in recognising the efficacy of the Births, Deaths and Marriages Registration Act 1996 provides that except as may be provided for in the Act, nothing in the Act affects the requirement of the parents of a child born as a result of a surrogacy agreement to have the child's birth registered under the Births, Deaths and Marriages Registration Act 1996.⁶⁸

Limitation of Liability

The law provides that except as specifically provided in the Act, no civil or criminal liability attaches to the Crown, or a person exercising powers and functions under the Act in respect of an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of a power, function or duty conferred or imposed by or under the Act.⁶⁹

⁶⁵ Section 26 (3) defines "publish" to mean to disseminate or provide access, by any means, to the public or a section of the public.

⁶⁶ Section 26(1) Surrogacy Act 2019.

⁶⁷ Section 26(2) Surrogacy Act 2019.

⁶⁸ See section 27 Surrogacy Act 2019.

⁶⁹ Section 28 Surrogacy Act 2019.

This law is significant because it gives immunity to the persons exercising powers under the Act. The issue of surrogacy is a delicate one and the good intention of the agents of the Crown acting in good faith may turn into a subject of litigation and this may also hinder the administration of the Act.

Confidentiality of Information

On confidentiality of information, the law provides that no person should directly or indirectly disclose information obtained in the course of the administration or operation of the Act.⁷⁰ There are however some exceptions to the above which are:⁷¹

- (i) for the purposes of the administration or enforcement of this Act; or
- (ii) for the purposes of referring the matter to a law enforcement agency; or
- (iii) for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty; or
- (iv) to an agency or instrumentality of this State, the Commonwealth, or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions; or
- (v) if the disclosure is reasonably necessary for the protection of the lawful interests of that person; or (vi) as is otherwise required or authorised by or under this or any other Act.

The maximum penalty for going against this section is \$10 000.⁷² On service of documents under the Act, the law provides for direct service and substituted service.⁷³

Regular Review of the Act

The minister is given the power to cause the Act to be reviewed and reported after its fifth anniversary and before the sixth anniversary of the commencement and the report should

⁷⁰ Section 29 Surrogacy Act 2019.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ Section 30 Surrogacy Act provides that:

Except where this Act requires otherwise, a notice or other document required or authorised to be given to or served on a person under this Act may— (a) be given to the person personally; or (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years, or (c) be posted to the person at the person's last known place of residence or business; or (d) be transmitted by email to an email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission); or (e) if the person is a company or registered body within the meaning of the Corporations Act 2001 of the Commonwealth, be served in accordance with that Act.

be laid before the House of Parliament within six sittings of receiving the report.⁷⁴ The Governor is empowered to make regulations for the purpose of the Act.

The schedule to the law contains amendment provisions to the Assisted Reproductive Treatment Act 1988, Births, Deaths and Marriages Registration Act 1996, and Family Relationships Act 1975.

Apart from the little observations pointed out in some of the provisions of the law which could be worked upon, the South Australia Surrogacy Act 2019 is a model law that deserves emulation. The law exhaustively provided for altruistic surrogacy.

LESSONS FROM SOUTH AUSTRALIA

As shown above, the South Australia Surrogacy Act is a robust law that provides for the rights of the child or children born through surrogacy, the duties, and rights of the surrogate mother, and that of the intended parents. The major lessons learnt from this particular law are as follows:

(i) Principles of Surrogacy

The principles of this law recognised the fundamental human rights of the parties to the lawful surrogacy agreement. It especially recognised the human rights of the surrogate mother and the child born of the such surrogacy agreement. The law also provides that the surrogate mother must not be financially disadvantaged.

The only observation in this provision of the law is how a surrogate mother would be adjudged or determined to be financially disadvantaged considering the fact the surrogacy is an altruistic one (non-commercial). This defect can be worked upon when adopting this law as a model law.

⁷⁴ Section 31 provides that:

- (1) The Minister must cause a review of the operation of this Act to be conducted and a report on the review to be prepared and submitted to the Minister.
- (2) The review and the report must be completed after the fifth, but before the sixth anniversary of the commencement of this Act.
- (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

(ii) Surrogacy Agreement

On surrogacy agreement, the law specifically provides for the content of a surrogacy agreement. This implies that every surrogacy agreement not in conformity with the section of the law is unlawful. This is a lesson to be learnt from this section.

(iii) Surrogacy Cost

Because the surrogacy being mentioned here is non-commercial, the law specifically mentioned what is referred to as surrogacy cost. This surrogacy cost provided for in this law is exhaustive and gives space for discretion while following the law strictly. This is a lesson learnt from this section.

(iv) Enforcement of Surrogacy Agreement

In this section, the law provided that any surrogacy agreement that does not conform with the law will not be enforceable in the court of competent jurisdiction. It also makes enforceable a provision of the lawful surrogacy agreement that provides for the reimbursement of surrogacy costs that had been incurred. It further provides that the enforceability will not apply where the surrogate mother refuses to relinquish the child's custody.

The only gap observed in this provision of the law is the situation where the intended parents refuse to take custody of the child of the lawful surrogacy agreement and the surrogate mother has fulfilled her part of the bargain. This is a lesson and the gap can be filled when adopting this law.

(v) Counselling of Parties to Surrogacy

The intended parents and the surrogate mother of a lawful surrogacy agreement are required under the law to go for counselling before commencing the process. The surrogate mother is also required to continue counselling during the pendency of the pregnancy. The intended parents are to bear the cost of the counselling and where this is not done, it is an offence punishable with a penalty of a fine under the law. The penalty itself will be much more than the cost of the counselling. This is a lesson from the law.

(vi) Rights of surrogate mother to manage pregnancy and birth

The law provides for the rights of the surrogate mother to manage the pregnancy and birth like any other pregnant woman even where the lawful surrogacy agreement says otherwise. It means that no lawful surrogacy agreement should restrict the rights of the surrogate mother to manage the pregnancy. This is a lesson and it is a provision to prevent the surrogate mother from being seen as a slave.

(vii) Medical decisions affecting surrogate mother or child

The law provides that any medical decision to be taken on the surrogate mother and the unborn child should be taken as if the lawful surrogacy agreement did not exist. This is to ensure that the surrogate mother and the child are given quality healthcare treatment. This is one of the lessons learnt.

(viii) Court orders relating to a lawful surrogacy agreement

The law gives the court the power to make orders relating to the welfare of a child. Application for such orders must be made between thirty days to twelve months from the birth of the child of lawful surrogacy agreement. The court is also given wide power to allow a later time if it is in the best interest of the child. The order being talked about is the relationship of the child to the intended parents and the surrogate mother.

The Ghana law however provides for the pre-birth order to be made to the High Court of Ghana within twelve weeks of introducing the embryo or gamete into the surrogate mother to be named as the parent of a child born through surrogacy or any other assisted reproductive birth if the birth occurs within twenty-eight weeks of the order of the High Court. The parental order may be for either the intended parent or surrogate mother or both parents of a child. There is also a provision for post-birth order or substituted parentage.⁷⁵

Though South Australian law and Ghana law are similar, the major difference is that Ghana law is made to recognise and provide birth registration for a child born of surrogacy through the assisted reproductive system while South Australian law is for the enforcement of the lawful surrogacy agreement. Both laws can be reconciled to provide the desired result.

⁷⁵ See generally section 22 of the Ghana Registration of Births and Deaths Act, 2020 (Act 1027)

(ix) Notification to the Registrar of Births, Deaths, and Marriages

The law provides that after the court order relating to the child, the court registrar will give a written notice to the registrar of births, deaths, and marriages the following information as to, the date of the order, the full name, address, and occupation of the birth mother of the child, the full name, address, and occupation of the intended parent or parents of the child under the relevant lawful surrogacy agreement, the name by which the child is known before, and is to be known after, the order becomes effective, details of the date and place of birth of the child, the terms of any relevant consequential or ancillary orders made, if known, the identity of the donor of any human reproductive material used in relation to the relevant lawful surrogacy agreement and resulting in the birth of a child (being a donor who is not the birth mother or an intended parent), if known, such other information as may be reasonably required by the registrar of births, deaths, and marriages for the purposes of registration of the birth of the child to whom the order relates. The law further provides that records of the proceedings relating to an order under this law will not be available for inspection except if the court authorises such. The above is the lesson learnt from the law.

(x) Offences relating to surrogacy agreements

The law prohibits commercial surrogacy in its entirety. It makes it an offence to enter into a commercial surrogacy agreement. This section of the law should be part of the provisions to be adapted because it prohibits commercial surrogacy, promotes fundamental human rights, and prevents modern-day slavery.

(xi) Registration of Child's birth

This section gives credence to the Ghana law allowing a child born from a surrogacy agreement to have his or her birth registered under the appropriate law. It confirms the protection of the child against any form of discrimination as to the circumstance of his or her birth.

(xii) Limitation of Liability

This section gives immunity from civil or criminal liability to the Crown, or a person exercising powers and functions under the law in respect of an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of a power, function or duty conferred or imposed by or under the law. This allows effective administration of the law.

(xiii) Confidentiality of Information

This section provides that no person should directly or indirectly disclose information obtained in the course of the administration or operation of the law. However certain instances when such information can be disclosed are: for the purposes of the administration or enforcement of the law or for the purposes of referring the matter to a law enforcement agency; or for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty or to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions or if the disclosure is reasonably necessary for the protection of the lawful interests of that person or as is otherwise required or authorised by or under this or any other law.

(xiv) Regular Review of the Act

This section provides for regular review of the law to keep abreast of the contemporary world. It provides that the law should be reviewed after its fifth anniversary but before the sixth anniversary. This is a lesson.

CONCLUSION

The article made an analysis of the South Australia Surrogacy Act 2019. The Law as analysed above shows how important the welfare of the parties to the lawful surrogacy agreement is. We need to replicate this in our own countries' regulations on surrogacy.

It is important to note here that the South Australia Surrogacy Act 2019 and its Regulation (Surrogacy Regulations 2020) deal with the surrogate mother, the child or children born of lawful surrogacy, and the intended parent or parents. However, other laws take care of the regulation of fertility clinics, registration of birth, death, and marriage and family relationship.⁷⁶

It is recommended that the surrogacy laws in Ghana and Nigeria should be made to be altruistic to avoid modern-day slavery, human rights violation, and human trafficking. The South Australian Surrogacy Act 2019 is a model law that is needed right now in terms of the legal rights and duties of the Surrogate mother, legal rights of the child or children born through surrogacy, rights, and duties of the intended parents, duties, and obligations of the Fertility Clinic or hospital in which the process took place.

⁷⁶ The Surrogacy Regulations 2019 made related amendments to the Assisted Reproductive Treatment Act 1988, the Births, Deaths and Marriages Registration Act 1996, and the Family Relationships Act 1975.

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