

CONFIDENTIAL

THIS DOCUMENT IS THE PROPERTY OF HER BRITANNIC MAJESTY'S GOVERNMENT

C(85) 2

COPY NO 79

21 January 1985

CABINET

LEGISLATION ON COMMERCIAL SURROGACY

Memorandum by the Lord President of the Council

At its meeting last week, the Home and Social Affairs Committee (H) discussed proposals from the Secretary of State for Social Services on the way forward following the Report of the Committee of Inquiry into Human Fertilisation and Embryology (the Warnock Report). The Secretary of State proposed that while legislation to implement the Warnock Report as a whole should be brought forward for the 1985-86 Session, on one aspect - commercial surrogacy - urgent legislation to outlaw this practice should be brought forward this Session. The Committee concluded that it would be unwise to legislate on this aspect alone in this Session but that I should report the issues to Cabinet for a final decision.

BACKGROUND

2. Surrogacy is the practice whereby one woman carries a child for another with the intention that the child should be handed over after birth. Commercial surrogacy is where payment is made by the woman or couple who receive the child after birth to the surrogate mother and to the agency which has brought the parties together. The recent case of baby Cotton, which involved such arrangements, has received considerable publicity; the local authority social services department and the High Court intervened; and there is significant public feeling that such arrangements should be prohibited by legislation. There are believed to be a number of other cases where surrogate mothers will give birth over the coming months. The pressure to legislate is therefore unlikely to go away and more likely to increase.
3. On surrogacy, the Warnock Committee recommended
 - a. That legislation be introduced to render criminal the creation or the operation in the United Kingdom of agencies whose purposes include the recruitment of women for surrogate pregnancy or making arrangements for individuals or couples who wish to utilise the services of a carrying mother; such legislation should be wide enough to include both profit and non-profit making organisations
 - b. That the legislation be sufficiently wide to render criminally liable the actions of professionals and others who knowingly assist in the establishment of a surrogate pregnancy.

CONFIDENTIAL

c. That it be provided by statute that all surrogacy agreements are illegal contracts and therefore unenforceable in the courts.

THE SECRETARY OF STATE'S PROPOSALS

4. As noted above, on the generality of Warnock's recommendations the Secretary of State for Social Services is carrying out consultations with the intention of bringing to colleagues proposals for general legislation next Session. He is, however, convinced that, in view of the considerable pressure to take urgent action, legislation should be introduced this Session to deal solely with commercial surrogacy arrangements (ie the recommendation at 3a. above). While recognising that there will be complications in preparing legislation urgently on this aspect alone and that it will not be easy to confine debate, he considers it will be very difficult to hold a situation in which there are no moves to legislate until next Session.

H COMMITTEE'S VIEWS

5. Some members of H Committee felt that the case for outlawing surrogacy had not been made out. They noted that two members of the Warnock Committee had dissented from the relevant recommendations, and that the much reduced opportunities for adoption increased the case for alternative arrangements, including possibly a role for agencies to whom payments were made. They thought that it would be unwise to legislate before public debate had taken consideration of these aspects further.

6. There was also a feeling in the Committee that more thought was needed about whether the legislation would apply to non-profit-making agencies (which might nonetheless charge a fee to cover their costs) as well as to profit-making agencies and how the line that was drawn could be justified. We were convinced that the medical professions would strongly resist a Bill which put them at risk of prosecution for carrying out, for example, artificial insemination in return for fees.

7. Furthermore all members of the Committee were impressed by the clear view of the Lord Chancellor and the Solicitor General that it would be unwise to embark on legislation without thinking through with care the family and legal status of children resulting from surrogate pregnancies, and the implications of fertilisations which took place overseas or in vitro.

CONCLUSION

8. Overall the view in H Committee was that the pressure for legislation on commercial surrogacy this Session should be resisted, thus allowing time for opinion to form further and for the legal issues raised by the Lord Chancellor and the Solicitor General to be properly thought through and a line determined. The Government should, however, press ahead with its consideration of this and the other issues raised by Warnock so that we are in a position to legislate on all of them next Session.

CONFIDENTIAL

9. In view of the current controversy, I invite colleagues to consider whether legislation to deal only with commercial surrogacy should be introduced this Session as a matter of urgency.

W

Privy Council Office

21 January 1985

CONFIDENTIAL