

PRIME MINISTER

COMMERCIAL SURROGACY

Having seen the Lord President's memorandum on this subject (C(85)2) which we are to discuss tomorrow, I felt I should set out for you and colleagues the reasons why I was unable to go along with the majority view at H.

Present situation

The Warnock Committee recommendation in favour of a ban on surrogacy agencies (and they were united in their view that commercial surrogacy should be outlawed) has been specifically supported by 90 per cent of the organisations which have commented. These include all the christian churches and representative organisations, and the Chief Rabbi; the major women's organisations; and all the interested professional organisations. During the consultation period we were under some pressure for early legislation but in the wake of the Cotton case there have been many calls in Parliament and in the media for a bill to be introduced in the current session. This pressure will be intensified when further commercially-arranged births take place. I understand that there are at least three more due - the first probably in March - from the one commercial agency already known to be operating. If we do not act now the chances are that both the number of births and, possibly, the number of agencies will increase rapidly in the period before full legislation on Warnock can be enacted.

Arguments against commercial surrogacy

In my view the key arguments on commercial surrogacy are

- the inherent unacceptability of allowing children to be sold and of payment for pregnancy;

E. R.

- the undesirability of bringing commercial activity into matters of this kind. We do not, and should not, have commercial participation in adoption, fostering, blood donation or organ transplantation;
- the risk of exploitation of the women concerned where an agency has a financial incentive to encourage surrogacy;
- the danger that unlicensed agencies would have an incentive to increase the use of surrogacy - seeking to extend it as a convenience for women so that they avoid undergoing pregnancy, particularly if embryo donation (ie implantation of an embryo into a surrogate mother) were used.

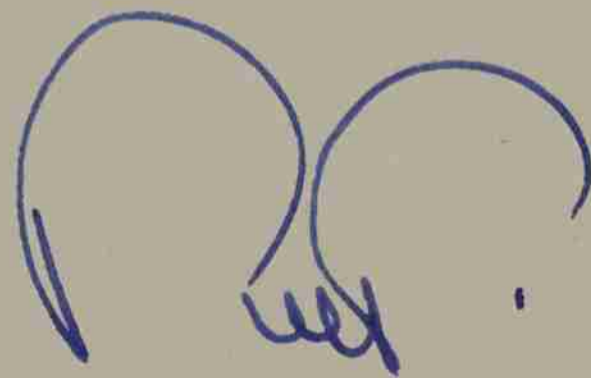
There are other issues on surrogacy. These relate not just to the family and legal status of children resulting from surrogacy to which the Lord Chancellor and Solicitor-General have drawn attention; they also concern the consequences of, for instance, the birth of a handicapped child to a surrogate mother, where the commissioning parents may be unwilling to accept responsibility for the child. This has already happened in America. There is also the question of exporting children to commissioning parents abroad. All these problems are more acute in relation to commercial surrogacy.

The need for urgency

I fully agree that all the issues raised by surrogacy need to be addressed carefully and in detail as part of a wider Warnock Bill. My reason for seeking early legislation on the central question of the involvement of agencies is that all the problems outlined above can only become more difficult to handle if we do not act now. The number of children born into this legal limbo will increase; the danger of a very bad case will grow; and the number of agencies themselves will mount. Throughout the period before full legislation is enacted we would be at risk not only of renewed public and political pressure but also of real criticism if one of the worse cases occurs for having failed to act earlier.

E. R.

The Bill needed to hold the position would be simple - as the annex to this minute shows - and uncontroversial. I hope colleagues will agree that it should be introduced this session.

A handwritten signature in blue ink, appearing to be 'NF', is located in the lower right quadrant of the page.

23 January 1985

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CONTENT OF A LIMITED BILL ON SURROGACY

1. To prohibit the recruitment of surrogate mothers or the making of surrogacy arrangements by -
 - a. a body of persons; or
 - b. any person so acting habitually or for gain;but not medical or other assistance to establish a surrogate pregnancy.

2. To prohibit advertisements -
 - a. of surrogacy agency services (as in 1 above);
 - b. of willingness to act as a surrogate mother; and
 - c. of desire to commission a surrogate pregnancy.

3. To prohibit any payment or reward for -
 - a. surrogacy agency services; or
 - b. acting as a surrogate mother;but not compensatory payments for expenses incurred or earnings lost in consequence of a surrogate pregnancy.