acts in the UK; (a) initiate or take part in any negotiations with the view to the making of a surrogacy arrangement; (b) offer or agree to negotiate the making of a surrogacy arrangement, or; (c) compile any information with a view to the making of a surrogacy arrangement, and no person in the UK shall knowingly cause another do do any of these acts on a commercial basis. S.2(2) (a-b) SAA 1985 provides that a person who contravenes subsection 1 above is guilty of an offence, but is not a contravention of that subsection; (a) for a woman, with a view to become a surrogate mother herself, to do any act mentioned in that subsection or cause such an action to be done; or (b) for any person, with a view to a surrogacy mother carrying a child for him, to do such an act or to cause such an act to be done. Altruistic surrogacy is completely legal in the UK. It is only commercial surrogacy that is prohibited.

The HFEA 2008 is relevant in 2 ways. Parenthood is relevant as the legal mother of the child is the surrogate mother under s.33(1) HFEA 2008. Parental orders are relevant as orders grant the commissioning parents status as the child’s legal parents. The commissioning parents must satisfy certain conditions in s.4 HFEA 2008.

The UK law can be said to take a paternalistic approach towards surrogacy for a number of reasons: it prohibits commercial surrogacy; it prohibits advertisements; surrogate mothers can only be paid reasonable expenses under s.58(4) HFEA 2008; it makes contracts/agreements in the UK unenforceable; and, can be said to have an impact on procreative liberty and autonomy.

Robertson (1996) in ‘Children of Choice’ provides that procreative liberty means both the freedom to decide whether or not to have children, as well as the freedom to control one’s reproductive capacities. He argues that the principle of procreative liberty should be used to determine the ethics and legalities of the many controversies surrounding ART. He also provides that ART technologies excite in us the huzzas of approval and homilies of despair. On the one hand they are eagerly sought by persons who suffer from infertility, who risk offspring with genetic disease, or who wish greater control over the timing of children. But, others decry their use as unnatural interventions into technology, and fear their effect on children, families, mothers and society’.

The Human Fertilisation and Embryology Authority is the UK’s independent regulator overseeing the use of gametes and embryos in fertility treatment and research. It promotes a model of altruism/donation. According to Thomas Nagel (1970) ‘altruism is acting out of a concern for the well being of others’.

The law on the donation of eggs, sperm and embryos is set by both UK legislation and a European Directive implemented in 2007 (The EU Tissues and Cells Directive). This legal framework means that the UK has to ensure that donation is voluntary and unpaid, and donors act from altruistic motives, and that outright payment for donation is not allowed by law. Surrogacy adopts a donation/altruistic model.

A feminist perspective would challenge the altruism agenda. It would say that surrogacy is different to egg/sperm donation as there is more labour/work involved. Financial payment