

Legal Parenthood and Parental Responsibility

Patients should be aware that there is a difference in law between the legal status of 'father' or 'parent' and having 'parental responsibility' for a child. In any case in which patients seeking treatment have doubts or concerns about legal parenthood or parental responsibility for a child born as a result of treatment services, we would advise that you should seek your own legal advice. The HFEA define legal parenthood in some common situations as detailed below (further information can be obtained from the HFEA website www.hfea.gov.uk) :-

Legal parenthood when the woman has a husband

Where a married woman is seeking treatment using her husband's sperm or embryos created using her husband's sperm, then the husband will automatically be the legal father of any child born as a result of the treatment.

Where a married woman is seeking treatment using sperm other than that of her husband, or an embryo created using sperm other than that of her husband, her husband will be treated as the father of any child born as a result of that treatment unless:

- (a) at the time the sperm and eggs or embryos were placed in her, or she was inseminated, she and her husband were judicially separated, or
- (b) it is shown that the husband did not consent to the placing in her of the sperm and eggs or embryos, or to her insemination.

Legal parenthood when the woman has a civil partner

Where a woman in a civil partnership is seeking treatment using donor sperm, or embryos created using donor sperm, the woman's civil partner will be treated as the legal parent of any resulting child unless, at the time of placing the embryo or sperm and eggs in the woman, or of her insemination:

- (a) a separation order was in force, or
- (b) it is shown that the civil partner did not consent to the placing in her of the sperm and eggs, or embryos, or to the insemination.

Legal parenthood: male partner

'Male partner' is the term used to refer to any man who intends to be the legal father of any child born from treatment, who is not married to and is not within a prohibited degree of relationship to the woman being treated (as defined in section 58(2), part 2, HFE Act 2008).

Where a woman is seeking treatment using her partner's sperm, or embryos created using her partner's sperm, the partner will automatically be the legal father of any child born as a result of the treatment.

Where a woman who is not married or in a civil partnership (or a woman who is separated from her husband or civil partner or whose husband or civil partner does not consent to the treatment) is to be treated with a male partner using donor sperm, or embryos created with donor sperm, the male partner can be treated as the legal father of any resulting child if, at the time the eggs and sperm or embryos are placed in the woman or she is inseminated:

- (a) both the woman and the male partner have given written, signed notice (subject to the exemption for illness, injury or physical disability) to the centre consenting to the male partner being treated as the father of any resulting child
- (b) neither of these consents has been withdrawn
- (c) the woman has not given any subsequent consent to any other man or woman being treated as the legal parent of any resulting child, and
- (d) the patient and male partner are not within prohibited degrees of relationship to each other (as defined in section 58(2), HFE Act 2008).

Legal parenthood: female partner

'Female partner' is the term used throughout this guidance note to refer to any woman who intends to be the legal parent of any child born from treatment, who is not in a civil partnership with or within a prohibited degree of relationship to the woman being treated (as defined in section 58(2), part 2, HFE Act 2008).

Where a woman who is not married or in a civil partnership (or a woman who is separated from her husband or civil partner or whose husband or civil partner does not consent to the treatment) is to be treated together with a female partner using donor sperm, or embryos created with donor sperm, the female partner can be treated as the legal parent of any resulting child if, at the time the eggs and sperm or embryos are placed in the woman or she is inseminated:

- (a) both the woman and the female partner have given written, signed notice (subject to the exemption for illness, injury or physical disability) to the centre consenting to the female partner being treated as the parent of any resulting child,
- (b) neither of these consents has been withdrawn,
- (c) the woman has not given any subsequent consent to any other man or woman being treated as the legal parent of any resulting child, and
- (d) the patient and female partner are not within prohibited degrees of relationship to each other (as defined in section 58(2), part 2, HFE Act 2008).

Parenthood after death of a man providing sperm

A husband or male partner who has provided sperm for the treatment of their wife or female partner can be registered as the father of any child born as a result of treatment after their death, if the following conditions are met:

- (a) the man had given written consent for his sperm, or embryos created using his sperm, to be used after his death in the treatment of his wife or partner
- (b) the man had given written consent to being registered as the father of any resulting child
- (c) the woman elected in writing, within 42 days (21 days in Scotland) after the child's birth, for the man's details to be entered in the relevant register of births, and
- (d) no-one else is to be treated as the father or parent of the child.

The treatment can involve insemination of sperm, transfer of sperm and eggs, or transfer of embryos created before or after the man's death. The centre must ensure that partners are given an opportunity to consent to this.

Parenthood after death of a partner who has not provided sperm

A partner (husband, civil partner or other partner) who has not provided sperm for the treatment of their wife or female partner can be registered as the father or parent of any child born as a result of treatment after their death, if the following conditions are met:

- (a) the treatment involved the transfer to the woman of an embryo after the death of the partner
- (b) the embryo was created when the partner was alive,
- (c) the partner had given written consent for the embryo to be placed in the woman after their death
- (d) the partner had given written consent to being registered as the father or parent of any resulting child
- (e) the woman elected in writing, within 42 days (21 days in Scotland) after the child's birth, for the partner's details to be entered in the relevant register of births, and
- (f) no-one else is to be treated as the father or parent of the child.

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