

## Legal Parenthood and Parental Responsibility

This leaflet contains important information so that it is clear who are the legal parents of any child born from fertility treatment. Please read it carefully and if you have any questions please speak to a member of staff.

### Why is legal parenthood important?

It is important to ensure it is clear before treatment who the legal parent/s of any child born will be. The legalities of parenthood can affect many areas of the child's life such as their nationality and inheritance, who has a say in their schooling, medical treatment and religious upbringing and who has a financial responsibility for them.

Please be aware that there is a difference in law between the legal status of 'father' or 'parent' and having 'parental responsibility' for a child. It is possible for a person to act as a parent to a child (have parental responsibility) without actually being their legal parent.

If you have any doubts or concerns about legal parenthood or parental responsibility for a child born as a result of treatment services, you are advised to seek your own legal advice.

### Proof of Marital Status

Whether a couple are legally married to each other in UK law can influence how legal parenthood is recorded. Therefore, we will ask for proof of your marital status, unless you tell us you have never been married.

If you are married to each other we will ask to see a copy of your marriage certificate at your consents appointment. If you cannot provide this we will ask you to complete additional paperwork to reflect this.

If either of you have been married before we will need to see a copy of your decree of divorce at your consent signing appointment.

If either of you are legally married to anyone else, who is not the person you seek treatment with you must tell staff. Not doing so could risk a situation where the ex-partner is recognised as the legal parent of a child born from treatment, even if they are not biologically related to the child.

If your marital status changes at any point during your treatment or between treatments please ensure you tell a member of staff.

### How is legal parenthood recorded?

Our clinic will provide you with the necessary consent forms to ensure your intention to be the legal parent of any child born is correctly recorded. The forms used depend on your personal circumstances so it is **very important that you are clear and honest about your circumstances** so we can ensure the correct ones are issued. The consent forms are produced by our regulator, the Human Fertilisation and Embryology Authority (HFEA), and by the clinic ourselves.

### Couples using their own eggs and sperm

If two people presenting for treatment are married to, or in a civil partnership with, each other, and that marriage/civil partnership is recognised as legal in the UK, the woman's spouse will automatically become the legal parent of any resulting child.

If the two people presenting for treatment are not married to, or not in a civil partnership together, the partner will automatically become the legal parent of the child if his own sperm is used in treatment.

For absolute clarity we ask all couples, regardless of their circumstance, to complete a clinic consent form to record the partner's understanding that they will be a legal parent.

### Couples using donated eggs and/or sperm

A woman who gives birth to a child automatically becomes their mother and legal parent, even if donated eggs were used in treatment.

If you are having treatment with donor sperm at a UK-licensed clinic, such as ours, the donor will have no legal responsibility for any children born from the treatment.

If two people presenting for treatment are married to, or in a civil partnership with, each other, and that marriage/civil partnership is recognised as legal in the UK, the woman's spouse will automatically become the legal parent of any resulting child, even if donor sperm is used in treatment.

If the two people presenting for treatment are not married to, or not in a civil partnership together, the partner will only automatically become the legal parent of the child if his own sperm is used in treatment. If donor sperm is used the partner will not automatically become the legal parent of the child unless you both record your consent to this before treatment. This is recorded on the HFEA WP and PP forms. This is also the case for a female same-sex couple where one donates eggs to her partner for use in the treatment.

If two people presenting for treatment say they are married to each other, but there is any doubt whether or not the marriage is legally recognised in the UK we will ask you to fill in some additional consent forms if donor sperm is used. It is not because we don't believe that you are married but to ensure that the spouse is recognised as the legal parent in case it comes to light at a later date that the marriage is not seen as legal in the UK. We may take this approach if a couple are unable to find their marriage certificate or if a marriage ceremony was conducted outside the UK and staff are in any way unsure if this is seen as legal in the UK. Taking legal advice about the validity of a marriage according to UK law will take time and can be costly so the additional paperwork is an alternative to this.

If anyone presenting for treatment is still married to, or in a civil partnership with, someone else you **MUST** declare it to clinic staff so we can ensure the correct consent forms are completed. Not doing so could risk a situation where your ex-spouse is recognised as the legal parent of any child born from your treatment, even if they are not the biological parent. For this reason we ask to see evidence of the decree absolute if you have previously been married to someone else. If you only have a decree nisi at this stage you will need to wait until you have a decree absolute or seek legal advice. Whilst the HFEA provide paperwork for this circumstance (LC) they will also advise you to seek your own legal advice.

Please be aware that laws may differ in other countries. Nationals or Residents of other countries, or anyone treated with gametes from Nationals or Residents of other countries are advised that they may want to take steps to confirm whether any child born through UK treatment would be also recognised as their legal child elsewhere in the world.

### **Single women**

A single woman looking to parent alone does not need to sign any paperwork relating to legal parenthood if they are being treated with donor sperm at a UK licenced clinic. They will automatically be the mother and there will be no second legal parent.

### **Co-parenting**

If you have decided to co-parent a child with someone you are not in a relationship with, and that person is related to you, you should take legal advice. It is not always possible for related individuals to become the legal parents of a child together.

### **Registering the birth**

Parents who are not married or not in a civil partnership with each other will need to register the birth together. If the child is born to parents who are married or in a civil partnership one parent is allowed to register the birth alone if they wish.

### **Being registered as legal parent in the event of your death**

We ask all couples (married and unmarried) whether they would like their spouse/partner to still be registered as the legal parent in the event of the spouse/partner dying in the period of time between treatment and the registration of the birth. We provide forms called the HFEA PBR and MT forms for you to record your wishes.

### **Can we change our mind about consenting to being the legal parent?**

Yes, either one of you can withdraw consent, but only if it's done **BEFORE** treatment takes place. It is important that you speak to the clinic about this immediately and record your wishes in writing. We will issue a withdrawal of consent form (WCP) in this case. If donor sperm is being used for treatment the woman could still go ahead with treatment without the original partner being a legal parent but we would insist on

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additional counselling and quite possibly a postponement to treatment to fully consider the change of circumstances.

### **What happens to embryos in storage that were created with donor sperm if a couple separate or divorce?**

If a couple separate or divorce the embryos that are in storage may only be stored or used in accordance with the consent of the egg provider and sperm donor whose gametes were used to create the embryos. This is still the case even if the embryos were created with a view to a female partner carrying a pregnancy with those embryos

### **Further Information**

You may find it helpful to read how the HFEA define legal parenthood in some common situations, this detailed below.

Further information about legal parenthood can be found on our regulators website [www.hfea.gov.uk](http://www.hfea.gov.uk) using the QR code below. Their website will also signpost you to other sources of information.



### **Definitions**

#### **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.

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### **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.