



## Lesbian Couples: parenting

**The Human Fertilisation and Embryology Act 2008 introduce important changes for lesbian couples. It provides that same sex couples should enjoy the same parental rights as heterosexual couples. Although the law is changing, it does not have retrospective effect and so the date your child is conceived can have big implications upon who are the legal parents of the child.**

### Legal Parenthood

The birth mother is always the legal mother of the child. It does not matter whether the child is conceived using the birth mother's egg, the non-birth mother's egg or a donated egg. In English law, the birth mother is always the legal mother and automatically has parental responsibility.

The non-birth mother's legal status is not as simple and whether the non-birth mother automatically has parental status will depend upon:

- When the child was conceived
- Where the child was conceived
- How the child was conceived
- Whether known or unknown donor sperm was used

### Children conceived prior to 6 April 2009

The non-birth mother has no parental status and will need to apply to the court to acquire parental status.

If the child was conceived at a licensed clinic and the necessary consents were signed then the donor will also have no legal status.

If the child was conceived by home insemination then the donor is the legal father.

### Children conceived after 6 April 2009

If the child was conceived after 6 April 2009 the non-birth mother may automatically have parental status.

If the child was conceived at a licensed clinic. Then the non-birth mother is automatically recognised as the second legal parent if you are civil partners or the "agreed female parenthood conditions" are met. These conditions require the birth mother and non-birth mother to give consent to the non-birth mother being treated as a parent of the child. It is irrelevant whether the donor is known or not as when the child is conceived at a licensed clinic the donor has no legal status.

If the child is conceived by home insemination then the non-birth mother is automatically the second legal parent if you are in a civil partnership and the insemination took place by artificial means.

If the insemination is not by artificial means or you are not in a civil

partnership then the non-birth mother will not automatically have parental status and the donor will be the legal father.

You may decide that you want the non-birth mother to have parental responsibility and you may want to extinguish the legal father's parental status.

### Acquiring parental responsibility

Parental responsibility is legally defined as "all rights, duties, powers, responsibilities and authority" of a parent. If the non-birth mother does not automatically have legal parent status then she will need to acquire parental responsibility so that she has a legal right to be involved in the child's upbringing and is able to make decisions about important parts of the child's life, e.g. medical treatment, school applications etc.

There are 3 main ways to acquire parental responsibility:

1. *Step parent parental responsibility:* If you are in a civil partnership then the non-birth mother is a step-parent and can acquire parental responsibility by signing a step-parent parental responsibility form.

This process is relatively simple and involves completing a court form, taking it to your local family court for your signatures to be witnessed, then sending it to the Principal Registry Family Division in London. As well as the non-birth mother, all persons with parental responsibility must complete the form and so if the donor is a legal parent of the child then he too will need to sign the form.

If you are not in a civil partnership then to acquire parental responsibility the non-birth mother will need to apply to the court for a residence order or will need to adopt the child.

2. *Residence order:* A residence order is a court order which primarily states who the child should live with. If you are granted a residence order then you also acquire parental responsibility.

Step-parent parental responsibility and residence orders do not make the non-birth mother a legal parent; they just give her parental responsibility which can be removed. Additionally, they do not cancel the legal father's parental status.

3. *Adoption order*: Adoption gives the non-birth mother full parental status which gives her equal parental status to the non-birth mother. An adoption order also terminates the parental status of the legal father.

### Adoption

Once the non-birth mother has adopted the child she is a full legal parent. This parental status is permanent and can only be removed in extremely limited circumstances.

You cannot apply to the court to adopt until you have lived with the child for six months. Three months notice must be given to the local authority before the court application can be made and so in practice you must wait until the child is three months old before beginning the adoption process.

Once notice has been given to the local authority, social services will assign a social worker to visit you at home and prepare a detailed report for the court. This process is relatively simple although if there is a legal father he too will need to be involved in the process as he must consent to the adoption order being made.

Once the report has been completed you will need to attend a court hearing where a judge can make the adoption order.

### Making a will

If the non-birth mother is not automatically a legal parent then it is important for the birth mother and the non-birth mother to make a will as soon as the child is conceived.

The birth mother needs to make a will specifically appointing the non-birth mother as the child's legal guardian as if the birth mother were to die unexpectedly, e.g. in child birth, the non-birth mother would be unprotected as she has no automatic parental link to the child.

The non-birth mother may also wish to make a will to ensure that her estate would pass to her partner and/or their child as if she were to die intestate her partner and their child would not automatically be entitled to any inheritance.

### The rights of the sperm donor

Our leaflet entitled 'Sperm donors' explains the rights of sperm donors and the complex legal position where a known sperm donor is used.

### Contact us

Please contact **Kimberley Davies** if you would like any further advice or assistance with any of the issues mentioned above on **01202 786134** or [kimberley.davies@LA-law.com](mailto:kimberley.davies@LA-law.com)



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