

6. Legal parenthood


This guidance note contains:

Mandatory requirements

- Extracts from the HFE Act 2008
- Extracts from licence conditions

HFEA guidance

- Legal parenthood and parental responsibility
- Legal parenthood when the woman has a husband ■
- Legal parenthood when the woman has a civil partner ■
- Legal parenthood: male partner ■
- Legal parenthood: female partner ■
- Parenthood after death of a man providing sperm ■
- Parenthood after death of a partner who has not provided sperm ■
- Legal parenthood: surrogacy ■
- General procedures for obtaining consent
- People not to be treated as parents ■●
- Information provision and counselling ■●
- Notification of withdrawal of consent to parenthood ■●

 Refer to principles 5, 6 and 10

● Section includes mandatory requirements

■ Section includes interpretation of mandatory requirements



Mandatory requirements

Human Fertilisation and Embryology (HFE) Act 2008

PART 2: PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION

Meaning of “mother”

33 Meaning of “mother”

- (1) The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child.
- (2) Subsection (1) does not apply to any child to the extent that the child is treated by virtue of adoption as not being the woman’s child.
- (3) Subsection (1) applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or the sperm and eggs.

Application of sections 35 to 47

34 Application of sections 35 to 47

- (1) Sections 35 to 47 apply, in the case of a child who is being or has been carried by a woman (referred to in those sections as “W”) as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination, to determine who is to be treated as the other parent of the child.
- (2) Subsection (1) has effect subject to the provisions of sections 39, 40 and 46 limiting the purposes for which a person is treated as the child’s other parent by virtue of those sections.



Mandatory requirements (cont)

Meaning of “father”

35 Woman married at time of treatment

- (1) If—
- (a) at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination, W was a party to a marriage, and
 - (b) the creation of the embryo carried by her was not brought about with the sperm of the other party to the marriage, then, subject to section 38(2) to (4), the other party to the marriage is to be treated as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).
- (2) This section applies whether W was in the United Kingdom or elsewhere at the time mentioned in subsection (1)(a).

36 Treatment provided to woman where agreed fatherhood conditions apply

If no man is treated by virtue of section 35 as the father of the child and no woman is treated by virtue of section 42 as a parent of the child but—

- (a) the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, in the course of treatment services provided in the United Kingdom by a person to whom a licence applies,
- (b) at the time when the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, the agreed fatherhood conditions (as set out in section 37) were satisfied in relation to a man, in relation to treatment provided to W under the licence,
- (c) the man remained alive at that time, and
- (d) the creation of the embryo carried by W was not brought about with the man’s sperm,

then, subject to section 38(2) to (4), the man is to be treated as the father of the child.

37 The agreed fatherhood conditions

- (1) The agreed fatherhood conditions referred to in section 36(b) are met in relation to a man (“M”) in relation to treatment provided to W under a licence if, but only if,—
- (a) M has given the person responsible a notice stating that he consents to being treated as the father of any child resulting from treatment provided to W under the licence,
 - (b) W has given the person responsible a notice stating that she consents to M being so treated,
 - (c) neither M nor W has, since giving notice under paragraph (a) or (b), given the person responsible notice of the withdrawal of M’s or W’s consent to M being so treated,
 - (d) W has not, since the giving of the notice under paragraph (b), given the person responsible—
 - (i) a further notice under that paragraph stating that she consents to another man being treated as the father of any resulting child, or
 - (ii) a notice under section 44(1)(b) stating that she consents to a woman being treated as a parent of any resulting child, and
 - (e) W and M are not within prohibited degrees of relationship in relation to each other.
- (2) A notice under subsection (1)(a), (b) or (c) must be in writing and must be signed by the person giving it.
- (3) A notice under subsection (1)(a), (b) or (c) by a person (“S”) who is unable to sign because of illness, injury or physical disability is to be taken to comply with the requirement of subsection (2) as to signature if it is signed at the direction of S, in the presence of S and in the presence of at least one witness who attests the signature.

38 Further provision relating to sections 35 and 36



Mandatory requirements (cont)

- (1) Where a person is to be treated as the father of the child by virtue of section 35 or 36, no other person is to be treated as the father of the child.
- (2) In England and Wales and Northern Ireland, sections 35 and 36 do not affect any presumption, applying by virtue of the rules of common law, that a child is the legitimate child of the parties to a marriage.
- (3) In Scotland, sections 35 and 36 do not apply in relation to any child who, by virtue of any enactment or other rule of law, is treated as the child of the parties to a marriage.
- (4) Sections 35 and 36 do not apply to any child to the extent that the child is treated by virtue of adoption as not being the man's child.

39 Use of sperm, or transfer of embryo, after death of man providing sperm

- (1) If—
 - (a) the child has been carried by W as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination,
 - (b) the creation of the embryo carried by W was brought about by using the sperm of a man after his death, or the creation of the embryo was brought about using the sperm of a man before his death but the embryo was placed in W after his death,
 - (c) the man consented in writing (and did not withdraw the consent)—
 - (i) to the use of his sperm after his death which brought about the creation of the embryo carried by W or (as the case may be) to the placing in W after his death of the embryo which was brought about using his sperm before his death, and
 - (ii) to being treated for the purpose mentioned in subsection (3) as the father of any resulting child,
 - (d) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the man to be treated for the purpose mentioned in subsection (3) as the father of the child, and
 - (e) no-one else is to be treated—
 - (i) as the father of the child by virtue of section 35 or 36 or by virtue of section 38(2) or (3), or
 - (ii) as a parent of the child by virtue of section 42 or 43 or by virtue of adoption,

then the man is to be treated for the purpose mentioned in subsection (3) as the father of the child.

- (2) Subsection (1) applies whether W was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination.
- (3) The purpose referred to in subsection (1) is the purpose of enabling the man's particulars to be entered as the particulars of the child's father in a relevant register of births.
- (4) In the application of this section to Scotland, for any reference to a period of 42 days there is substituted a reference to a period of 21 days.

40 Embryo transferred after death of husband etc. who did not provide sperm

- (1) If—
 - (a) the child has been carried by W as a result of the placing in her of an embryo,
 - (b) the embryo was created at a time when W was a party to a marriage,
 - (c) the creation of the embryo was not brought about with the sperm of the other party to the marriage,
 - (d) the other party to the marriage died before the placing of the embryo in W,



Mandatory requirements (cont)

- (e) the other party to the marriage consented in writing (and did not withdraw the consent)–
 - (i) to the placing of the embryo in W after his death, and
 - (ii) to being treated for the purpose mentioned in subsection (4) as the father of any resulting child,
- (f) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the man to be treated for the purpose mentioned in subsection (4) as the father of the child, and
- (g) no-one else is to be treated–
 - (i) as the father of the child by virtue of section 35 or 36 or by virtue of section 38(2) or (3), or
 - (ii) as a parent of the child by virtue of section 42 or 43 or by virtue of adoption,

then the man is to be treated for the purpose mentioned in subsection (4) as the father of the child.

(2) If–

- (a) the child has been carried by W as a result of the placing in her of an embryo,
- (b) the embryo was not created at a time when W was a party to a marriage or a civil partnership but was created in the course of treatment services provided to W in the United Kingdom by a person to whom a licence applies,
- (c) a man consented in writing (and did not withdraw the consent)–
 - (i) to the placing of the embryo in W after his death, and
 - (ii) to being treated for the purpose mentioned in subsection (4) as the father of any resulting child,
- (d) the creation of the embryo was not brought about with the sperm of that man,
- (e) the man died before the placing of the embryo in W,
- (f) immediately before the man's death, the agreed fatherhood conditions set out in section 37 were met in relation to the man in relation to treatment proposed to be provided to W in the United Kingdom by a person to whom a licence applies,
- (g) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the man to be treated for the purpose mentioned in subsection (4) as the father of the child, and
- (h) no-one else is to be treated–
 - (i) as the father of the child by virtue of section 35 or 36 or by virtue of section 38(2) or (3), or
 - (ii) as a parent of the child by virtue of section 42 or 43 or by virtue of adoption,

then the man is to be treated for the purpose mentioned in subsection (4) as the father of the child.

- (3) Subsections (1) and (2) apply whether W was in the United Kingdom or elsewhere at the time of the placing in her of the embryo.
- (4) The purpose referred to in subsections (1) and (2) is the purpose of enabling the man's particulars to be entered as the particulars of the child's father in a relevant register of births.
- (5) In the application of this section to Scotland, for any reference to a period of 42 days there is substituted a reference to a period of 21 days.

Cases in which woman to be other parent



Mandatory requirements (cont)

42 Woman in civil partnership at time of treatment

- (1) If at the time of the placing in her of the embryo or the sperm and eggs or of her artificial insemination, W was a party to a civil partnership, then subject to section 45(2) to (4), the other party to the civil partnership is to be treated as a parent of the child unless it is shown that she did not consent to the placing in W of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).
- (2) This section applies whether W was in the United Kingdom or elsewhere at the time mentioned in subsection (1).

43 Treatment provided to woman who agrees that second woman to be parent

If no man is treated by virtue of section 35 as the father of the child and no woman is treated by virtue of section 42 as a parent of the child but—

- (a) the embryo or the sperm and eggs were placed in W, or she was artificially inseminated, in the course of treatment services provided in the United Kingdom by a person to whom a licence applies,
- (b) at the time when the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, the agreed female parenthood conditions (as set out in section 44) were met in relation to another woman, in relation to treatment provided to W under that licence, and
- (c) the other woman remained alive at that time,

then, subject to section 45(2) to (4), the other woman is to be treated as a parent of the child.

44 The agreed female parenthood conditions

- (1) The agreed female parenthood conditions referred to in section 43(b) are met in relation to another woman (“P”) in relation to treatment provided to W under a licence if, but only if,—
 - (a) P has given the person responsible a notice stating that P consents to P being treated as a parent of any child resulting from treatment provided to W under the licence,
 - (b) W has given the person responsible a notice stating that W agrees to P being so treated,
 - (c) neither W nor P has, since giving notice under paragraph (a) or (b), given the person responsible notice of the withdrawal of P’s or W’s consent to P being so treated,
 - (d) W has not, since the giving of the notice under paragraph (b), given the person responsible—
 - (i) a further notice under that paragraph stating that W consents to a woman other than P being treated as a parent of any resulting child, or
 - (ii) a notice under section 37(1)(b) stating that W consents to a man being treated as the father of any resulting child, and
 - (e) W and P are not within prohibited degrees of relationship in relation to each other.
- (2) A notice under subsection (1)(a), (b) or (c) must be in writing and must be signed by the person giving it.
- (3) A notice under subsection (1)(a), (b) or (c) by a person (“S”) who is unable to sign because of illness, injury or physical disability is to be taken to comply with the requirement of subsection (2) as to signature if it is signed at the direction of S, in the presence of S and in the presence of at least one witness who attests the signature.

45 Further provision relating to sections 42 and 43

- (1) Where a woman is treated by virtue of section 42 or 43 as a parent of the child, no man is to be treated as the father of the child.
- (2) In England and Wales and Northern Ireland, sections 42 and 43 do not affect any presumption, applying by virtue of the rules of common law, that a child is the legitimate child of the parties to a marriage.
- (3) In Scotland, sections 42 and 43 do not apply in relation to any child who, by virtue of any enactment or other rule of law, is treated as the child of the parties to a marriage.



Mandatory requirements (cont)

(4) Sections 42 and 43 do not apply to any child to the extent that the child is treated by virtue of adoption as not being the woman's child.

46 Embryo transferred after death of civil partner or intended female parent

(1) If–

- (a) the child has been carried by W as the result of the placing in her of an embryo,
- (b) the embryo was created at a time when W was a party to a civil partnership,
- (c) the other party to the civil partnership died before the placing of the embryo in the woman,
- (d) the other party to the civil partnership consented in writing (and did not withdraw the consent)–
 - (i) to the placing of the embryo in W after the death of the other party, and
 - (ii) to being treated for the purpose mentioned in subsection (4) as the parent of any resulting child,
- (e) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the other party to the civil partnership to be treated for the purpose mentioned in subsection (4) as the parent of the child, and
- (f) no one else is to be treated–
 - (i) as the father of the child by virtue of section 35 or 36 or by virtue of section 45(2) or (3), or
 - (ii) as a parent of the child by virtue of section 42 or 43 or by virtue of adoption,

then the other party to the civil partnership is to be treated for the purpose mentioned in subsection (4) as a parent of the child.

(2) If–

- (a) the child has been carried by W as the result of the placing in her of an embryo,
- (b) the embryo was not created at a time when W was a party to a marriage or a civil partnership, but was created in the course of treatment services provided to W in the United Kingdom by a person to whom a licence applies,
- (c) another woman consented in writing (and did not withdraw the consent)–
 - (i) to the placing of the embryo in W after the death of the other woman, and
 - (ii) to being treated for the purpose mentioned in subsection (4) as the parent of any resulting child,
- (d) the other woman died before the placing of the embryo in W,
- (e) immediately before the other woman's death, the agreed female parenthood conditions set out in section 44 were met in relation to the other woman in relation to treatment proposed to be provided to W in the United Kingdom by a person to whom a licence applies,
- (f) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the other woman to be treated for the purpose mentioned in subsection (4) as the parent of the child, and
- (g) no one else is to be treated–
 - (i) as the father of the child by virtue of section 35 or 36 or by virtue of section 45(2) or (3), or
 - (ii) as a parent of the child by virtue of section 42 or 43 or by virtue of adoption,

then the other woman is to be treated for the purpose mentioned in subsection (4) as a parent of the child.



Mandatory requirements (cont)

- (3) Subsections (1) and (2) apply whether W was in the United Kingdom or elsewhere at the time of the placing in her of the embryo.
- (4) The purpose referred to in subsections (1) and (2) is the purpose of enabling the deceased woman's particulars to be entered as the particulars of the child's other parent in a relevant register of births.
- (5) In the application of subsections (1) and (2) to Scotland, for any reference to a period of 42 days there is substituted a reference to a period of 21 days.

48 Effect of sections 33 to 47

- (1) Where by virtue of section 33, 35, 36, 42 or 43 a person is to be treated as the mother, father or parent of a child, that person is to be treated in law as the mother, father or parent (as the case may be) of the child for all purposes.
- (2) Where by virtue of section 33, 38, 41, 45 or 47 a person is not to be treated as a parent of the child, that person is to be treated in law as not being a parent of the child for any purpose.
- (3) Where section 39(1) or 40(1) or (2) applies, the deceased man—
- (a) is to be treated in law as the father of the child for the purpose mentioned in section 39(3) or 40(4), but
 - (b) is to be treated in law as not being the father of the child for any other purpose.
- (4) Where section 46(1) or (2) applies, the deceased woman—
- (a) is to be treated in law as a parent of the child for the purpose mentioned in section 46(4), but
 - (b) is to be treated in law as not being a parent of the child for any other purpose.
- (5) Where any of subsections (1) to (4) has effect, references to any relationship between two people in any enactment, deed or other instrument or document (whenever passed or made) are to be read accordingly.
- (6) In relation to England and Wales and Northern Ireland, a child who—
- (a) has a parent by virtue of section 42, or
 - (b) has a parent by virtue of section 43 who is at any time during the period beginning with the time mentioned in section 43(b) and ending with the time of the child's birth a party to a civil partnership with the child's mother, is the legitimate child of the child's parents.
- (7) In relation to England and Wales and Northern Ireland, nothing in the provisions of section 33(1) or sections 35 to 47, read with this section—
- (a) affects the succession to any dignity or title of honour or renders any person capable of succeeding to or transmitting a right to succeed to any such dignity or title, or
 - (b) affects the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any dignity or title of honour.
- (8) In relation to Scotland—
- (a) those provisions do not apply to any title, coat of arms, honour or dignity transmissible on the death of its holder or affect the succession to any such title, coat of arms or dignity or its devolution, and
 - (b) where the terms of any deed provide that any property or interest in property is to devolve along with a title, coat of arms, honour or dignity, nothing in those provisions is to prevent that property or interest from so devolving.



Mandatory requirements (cont)

References to parties to marriage or civil partnership

49 Meaning of references to parties to a marriage

- (1) The references in sections 35 to 47 to the parties to a marriage at any time there referred to—
 - (a) are to the parties to a marriage subsisting at that time, unless a judicial separation was then in force, but
 - (b) include the parties to a void marriage if either or both of them reasonably believed at that time that the marriage was valid; and for the purposes of those sections it is to be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the marriage was valid.
- (2) In subsection (1)(a) “judicial separation” includes a legal separation obtained in a country outside the British Islands and recognised in the United Kingdom.

50 Meaning of references to parties to a civil partnership

- (1) The references in sections 35 to 47 to the parties to a civil partnership at the time there referred to—
 - (a) are to the parties to a civil partnership subsisting at that time, unless a separation order was then in force, but
 - (b) include the parties to a void civil partnership if either or both of them reasonably believed at that time that the civil partnership was valid; and for the purposes of those sections it is to be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the civil partnership was valid.
- (2) The reference in section 48(6)(b) to a civil partnership includes a reference to a void civil partnership if either or both of the parties reasonably believed at the time when they registered as civil partners of each other that the civil partnership was valid; and for this purpose it is to be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the civil partnership was valid.
- (3) In subsection (1)(a), “separation order” means—
 - (a) a separation order under section 37(1)(d) or 161(1)(d) of the Civil Partnership Act 2004 (c. 33),
 - (b) a decree of separation under section 120(2) of that Act, or
 - (c) a legal separation obtained in a country outside the United Kingdom and recognised in the United Kingdom.

Further provision about registration by virtue of section 39, 40 or 46

51 Meaning of “relevant register of births”

For the purposes of this Part a “relevant register of births”, in relation to a birth, is whichever of the following is relevant—

- (a) a register of live-births or still-births kept under the Births and Deaths Registration Act 1953 (c. 20),
- (b) a register of births or still-births kept under the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49), or
- (c) a register of live-births or still-births kept under the Births and Deaths Registration (Northern Ireland) Order 1976 (S.I. 1976/1041 (N.I. 14)).

52 Late election by mother with consent of Registrar General

- (1) The requirement under section 39(1), 40(1) or (2) or 46(1) or (2) as to the making of an election (which requires an election to be made either on or before the day on which the child was born or within the period of 42 or, as the case may be, 21 days from that day) is nevertheless to be treated as satisfied if the required election is made after the end of that period but with the consent of the Registrar General under subsection (2).



Mandatory requirements (cont)

- (2) The Registrar General may at any time consent to the making of an election after the end of the period mentioned in subsection (1) if, on an application made to him in accordance with such requirements as he may specify, he is satisfied that there is a compelling reason for giving his consent to the making of such an election.
- (3) In this section “the Registrar General” means the Registrar General for England and Wales, the Registrar General of Births, Deaths and Marriages for Scotland or (as the case may be) the Registrar General for Northern Ireland.

Interpretation of references to father etc. where woman is other parent

53 Interpretation of references to father etc.

- (1) Subsections (2) and (3) have effect, subject to subsections (4) and (6), for the interpretation of any enactment, deed or any other instrument or document (whenever passed or made).
- (2) Any reference (however expressed) to the father of a child who has a parent by virtue of section 42 or 43 is to be read as a reference to the woman who is a parent of the child by virtue of that section.
- (3) Any reference (however expressed) to evidence of paternity is, in relation to a woman who is a parent by virtue of section 42 or 43, to be read as a reference to evidence of parentage.
- (4) This section does not affect the interpretation of the enactments specified in subsection (5) (which make express provision for the case where a child has a parent by virtue of section 42 or 43).
- (5) Those enactments are—
 - (a) the Legitimacy Act (Northern Ireland) 1928 (c. 5 (N.I.)),
 - (b) the Schedule to the Population (Statistics) Act 1938 (c. 12),
 - (c) the Births and Deaths Registration Act 1953 (c. 20),
 - (d) the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 (c. 58),
 - (e) Part 2 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49),
 - (f) the Congenital Disabilities (Civil Liability) Act 1976 (c. 28),
 - (g) the Legitimacy Act 1976 (c. 31),
 - (h) the Births and Deaths Registration (Northern Ireland) Order 1976 (S.I. 1976/1041 (N.I. 14)),
 - (i) the British Nationality Act 1981 (c. 61),
 - (j) the Family Law Reform Act 1987 (c. 42),
 - (k) Parts 1 and 2 of the Children Act 1989 (c. 41),
 - (l) Part 1 of the Children (Scotland) Act 1995 (c. 36),
 - (m) section 1 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39), and
 - (n) Parts 2, 3 and 14 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).
- (6) This section does not affect the interpretation of references that fall to be read in accordance with section 1(2)(a) or (b) of the Family Law Reform Act 1987 or Article 155(2)(a) or (b) of the Children (Northern Ireland) Order 1995 (references to a person whose father and mother were, or were not, married to each other at the time of the person’s birth).

58 Interpretation of Part 2

- (2) For the purposes of this Part, two persons are within prohibited degrees of relationship if one is the other’s parent, grandparent, sister, brother, aunt or uncle; and in this subsection references to relationships—
 - (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would subsist but for adoption, and



Mandatory requirements (cont)

- (2) (cont)
- (b) include the relationship of a child with his adoptive, or former adoptive, parents, but do not include any other adoptive relationships.

Licence conditions

- T60 A woman must not be provided with treatment services using embryos or donated gametes unless she and any man or woman who is to be treated together with her have been given a suitable opportunity to receive proper counselling about the implications of her being provided with treatment services of that kind, and have been provided with such relevant information as is proper.
- T61 A woman must not be provided with treatment services where there is an intended second parent unless, either before or after both have consented to the man or woman being the intended second parent, she and the intended second parent have been given a suitable opportunity to receive proper counselling about the implications of the woman being provided with treatment services and have been provided with such relevant information as is proper.
- T62 The reference in licence conditions T60 and T61 above to the intended second parent is a reference to:
- any man with respect to whom the agreed fatherhood conditions in Section 37 of the Human Fertilisation and Embryology Act 2008 (“the 2008 Act”) are for the time being satisfied in relation to treatment provided to the woman mentioned in licence conditions T60 and T61, and
 - any woman with respect to whom the agreed female parenthood conditions in Section 44 of the 2008 Act are for the time being satisfied in relation to treatment provided to the woman mentioned in licence conditions T60 and T61.
- T63 In the case of treatment services using donated gametes, or embryos created using donated gametes, the person receiving treatment and any intended second parent, must be provided with information about:
- the importance of informing any resulting child at an early age that they were born as a result of such treatment, and
 - suitable methods of informing such a child of that fact.
- T64 In cases where the nominated second parent withdraws their consent to be treated as the parent of any child born to a named woman, the PR must:
- notify the woman in writing of the receipt of the notice from the second parent, and
 - ensure that no treatment services are provided to the named woman until she has been notified of the second parent’s withdrawal of consent.
- T65 If a woman withdraws her consent to her nominated second parent being treated as the legal parent, or consents to a different person being the legal parent of any child resulting from treatment, the PR must notify the original nominated second parent in writing of this.



HFEA guidance

Legal parenthood and parental responsibility

- 6.1** The centre should provide information to people seeking treatment about legal parenthood. This information should include who will be the child’s legal parent(s) under the HFE Act 2008 and other relevant legislation. Nationals or residents of other countries, or individuals treated with gametes obtained from nationals or residents of other countries, should be informed that the law in other countries may be different from that in the United Kingdom.
- 6.2** The centre should explain 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 people seeking treatment have doubts or concerns about legal parenthood or parental responsibility for a child born as a result of treatment services, the centre should advise them to seek their own legal advice.



See also:

- [Human Fertilisation and Embryology Act 2008 explanatory notes available at www.opsi.gov.uk](http://www.opsi.gov.uk)

Legal parenthood when the woman has a husband



Interpretation of mandatory requirements

6A

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:

- 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
- 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.

6.3 If a married woman is seeking treatment using donor sperm, or embryos created using donor sperm, the centre should take all practical steps to:

- ascertain whether the husband consents to the treatment (taking into account the duty of confidentiality to the woman, where applicable), and
- obtain a written record of the husband's consent. If the husband does not consent, the centre should take all practical steps to obtain written evidence of this.

6.4 If the centre cannot obtain a written record of the husband's consent or refusal to consent, it should record the steps taken to establish whether he consents to the treatment in the medical records.

6.5 If a married woman wishes to be treated with a new partner (with his sperm or with donor sperm or a donor embryo) and her husband does not consent to his wife's treatment, then the woman's new partner can be the father or parent of any child born as a result of this treatment, if the right consents are in place.

Legal parenthood when the woman has a civil partner



Interpretation of mandatory requirements

6B

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 separation order was in force, or
- 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.

6.6 If a woman in a civil partnership is seeking treatment using donor sperm, or embryos created using donor sperm, the centre should take all practical steps to:

- ascertain whether the civil partner consents to the treatment (taking into account the duty of confidentiality to the woman seeking treatment, where applicable), and



6.6 (cont)

- (b) obtain a written record of the civil partner's consent – if the civil partner does not consent, the centre should take all practical steps to obtain written evidence of this.

6.7 If the centre cannot obtain a written record of the civil partner's consent or refusal to consent, it should record the steps taken to establish whether the civil partner consents to the treatment in the medical records.

Legal parenthood: male partner



Interpretation of mandatory requirements

6C

'Male partner' is the term used throughout this guidance note 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



Interpretation of mandatory requirements

6D

'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



Interpretation of mandatory requirements

6E

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



Interpretation of mandatory requirements

6F

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.

The centre must ensure that partners are given an opportunity to consent to this.

Legal parenthood: surrogacy



Interpretation of mandatory requirements

6G

Surrogate mother

The woman who gives birth to the child (in this case the surrogate) is the legal mother when the child is born.

Intended parents

The intended parents (whether they are husband and wife, civil partners or two persons who are living as partners) will not be the parents upon birth of the child. Parenthood will need to be obtained by parental order or adoption.



Interpretation of mandatory requirements (cont)

6G

Partner of the surrogate mother

If the surrogate is married or in a civil partnership, her husband or civil partner will be the legal father or parent of any child born as a result of her treatment, unless it is shown that the husband/partner does not consent to the treatment.

If the surrogate has a partner whom she is not married to or in a civil partnership with, the partner must have consented to being the father or parent of any child born as a result of treatment in order to be legally recognised as such. The surrogate must have also consented to her partner being recognised as the father or parent.

Intended father and sperm provider

If the intended father in a surrogacy arrangement has provided sperm for the treatment of the surrogate, he will need to register as a donor and therefore cannot be the father upon birth of the child. Fatherhood will need to be obtained by parental order or adoption.

See also guidance note:

- [14 – Surrogacy](#)

General procedures for obtaining consent

- 6.8** The centre should establish documented procedures to obtain written informed consent. The centre should retain the signed consent forms and ensure that a copy is available for those who have given consent.
- 6.9** When anyone gives, withdraws or varies consent, the centre should check their identity against identifying information held in the medical records. If there is doubt about a patient's identity, the centre should take steps to verify this, including examining photo identification such as a photocard driving licence or passport. The centre should record this evidence in the medical records.
- 6.10** The centre should ensure that there is a written record in the medical records that information has been provided to the person giving consent in each case.
- 6.11** The centre should ensure that consent is:
- given voluntarily
 - given by a person who has the capacity to do so, and
 - taken by a person authorised by the centre to do so.
- 6.12** The centre should ensure that any person giving consent declares that:
- they were given enough information to understand the nature, purpose and implications of receiving treatment (or their partner receiving treatment) following consent
 - they were given a suitable opportunity to receive proper counselling about the implications of receiving treatment (or their partner receiving treatment) following consent
 - they were given information about the procedure for varying or withdrawing consent, and
 - the information they have given in writing is correct and complete.
- 6.13** When obtaining consent to register the partner as the parent after their death, the centre should ensure that the partner consents to their details and identifying information about treatment being disclosed to the Registrar General.



People not to be treated as parents



Mandatory requirements

Human Fertilisation and Embryology (HFE) Act 2008

Part 2

41 Persons not to be treated as father

- (1) Where the sperm of a man who had given such consent as is required by paragraph 5 of Schedule 3 to the 1990 Act (consent to use of gametes for purposes of treatment services or non-medical fertility services) was used for a purpose for which such consent was required, he is not to be treated as the father of the child.
- (2) Where the sperm of a man, or an embryo the creation of which was brought about with his sperm, was used after his death, he is not, subject to section 39, to be treated as the father of the child.
- (3) Subsection (2) applies whether W was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination.

47 Woman not to be other parent merely because of egg donation

A woman is not to be treated as the parent of a child whom she is not carrying and has not carried, except where she is so treated—

- (a) by virtue of section 42 or 43, or
- (b) by virtue of section 46 (for the purpose mentioned in subsection (4) of that section), or
- (c) by virtue of adoption.

34 Application of sections 35 to 47

- (1) Sections 35 to 47 apply, in the case of a child who is being or has been carried by a woman (referred to in those sections as “W”) as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination, to determine who is to be treated as the other parent of the child.



Interpretation of mandatory requirements

6H

A sperm donor is not to be treated as the father of any child resulting from the use of his sperm in the treatment of others.

An egg donor is not to be treated as the parent of any child resulting from the use of her egg(s) unless her egg(s), or embryos created from her egg(s), are used in treating a civil partner or other female partner (subject to the requirements in sections 42, 43 or 46 of the HFE Act 2008, where relevant) or the resulting child is adopted by the egg donor.



Information provision and counselling



Mandatory requirements

Human Fertilisation and Embryology (HFE) Act 1990 (as amended)

Section 13

Conditions of licences for treatment

- (6) A woman shall not be provided with treatment services of a kind specified in Part 1 of Schedule 3ZA unless she and any man or woman who is to be treated together with her have been given a suitable opportunity to receive proper counselling about the implications of her being provided with treatment services of that kind, and have been provided with such relevant information as is proper.
- (6A) A woman shall not be provided with treatment services after the happening of any event falling within any paragraph of Part 2 of Schedule 3ZA unless (before or after the event) she and the intended second parent have been given a suitable opportunity to receive proper counselling about the implications of the woman being provided with treatment services after the happening of that event, and have been provided with such relevant information as is proper.
- (6B) The reference in subsection (6A) to the intended second parent is a reference to–
- (a) any man as respects whom the agreed fatherhood conditions in section 37 of the Human Fertilisation and Embryology Act 2008 (“the 2008 Act”) are for the time being satisfied in relation to treatment provided to the woman being treated, and
 - (b) any woman as respects whom the agreed female parenthood conditions in section 44 of the 2008 Act are for the time being satisfied in relation to treatment provided to the woman to be treated.
- (6C) In the case of treatment services falling within paragraph 1 of Schedule 3ZA (use of gametes of a person not receiving those services) or paragraph 3 of that Schedule (use of embryo taken from a woman not receiving those services), the information provided by virtue of subsection (6) or (6A) must include such information as is proper about–
- (a) the importance of informing any resulting child at an early age that the child results from the gametes of a person who is not a parent of the child, and
 - (b) suitable methods of informing such a child of that fact.

Schedule 3ZA: circumstances in which offer of counselling required as condition of licence for treatment

Part 2: events in connection with which counselling must be offered

- 4 A man gives the person responsible a notice under paragraph (a) of subsection (1) of section 37 of the Human Fertilisation and Embryology Act 2008 (agreed fatherhood conditions) in a case where the woman for whom the treatment services are provided has previously given a notice under paragraph (b) of that subsection referring to the man.
- 5 The woman for whom the treatment services are provided gives the person responsible a notice under paragraph (b) of that subsection in a case where the man to whom the notice relates has previously given a notice under paragraph (a) of that subsection.
- 6 A woman gives the person responsible notice under paragraph (a) of subsection (1) of section 44 of that Act (agreed female parenthood conditions) in a case where the woman for whom the treatment services are provided has previously given a notice under paragraph (b) of that subsection referring to her.
- 7 The woman for whom the treatment services are provided gives the person responsible a notice under paragraph (b) of that subsection in a case where the other woman to whom the notice relates has previously given a notice under paragraph (a) of that subsection.



Information provision and counselling (cont)



Interpretation of mandatory requirements

61

The law states that, where a woman who has consented to her male or female partner being treated as the legal parent of any child born as a result of her treatment, and the partner has consented to being the legal parent, treatment may continue after the point at which consent is given only if the woman and her partner:

- (a) have had a suitable opportunity to receive proper counselling about the implications of treatment in these circumstances, and
- (b) have been given proper information.

When people seek treatment using donor gametes or embryos, they must be given information about:

- (a) the importance of informing any resulting child, at an early age, that they were conceived using the gametes of a person who is not their parent, and
- (b) suitable methods of telling the child this.

See also guidance note:

- [3 – Counselling](#)
- [4 – Information to be provided prior to consent](#)

Notification of withdrawal of consent to parenthood



Mandatory requirements

Human Fertilisation and Embryology (HFE) Act 1990 (as amended)

Schedule 13

Conditions of licences for treatment

- (6D) Where the person responsible receives from a person (“X”) notice under section 37(1)(c) or 44(1)(c) of the 2008 Act of X’s withdrawal of consent to X being treated as the parent of any child resulting from the provision of treatment services to a woman (“W”), the person responsible–
- (a) must notify W in writing of the receipt of the notice from X, and
 - (b) no person to whom the licence applies may place an embryo or sperm and eggs in W, or artificially inseminate W, until W has been so notified.
- (6E) Where the person responsible receives from a woman (“W”) who has previously given notice under section 37(1)(b) or 44(1)(b) of the 2008 Act that she consents to another person (“X”) being treated as a parent of any child resulting from the provision of treatment services to W–
- (a) notice under section 37(1)(c) or 44(1)(c) of the 2008 Act of the withdrawal of W’s consent, or
 - (b) a notice under section 37(1)(b) or 44(1)(b) of the 2008 Act in respect of a person other than X,
- the person responsible must take reasonable steps to notify X in writing of the receipt of the notice mentioned in paragraph (a) or (b).



Notification of withdrawal of consent to parenthood (cont)



Interpretation of mandatory requirements

6J

If a person withdraws their consent to being treated as the legal parent of any child resulting from the treatment of their partner, the person responsible (PR) must notify the partner in writing of this. The partner must not be treated with sperm and eggs, or with embryos, or be inseminated, until she has been notified in this way.

If a woman withdraws her consent to her partner being treated as the legal parent of any child resulting from the woman's treatment, or notifies the centre that she wishes a different person to be treated as the legal parent of any child resulting from her treatment, the PR must notify the partner in writing of this.

Consent can be withdrawn only before sperm and egg or embryo transfer, or insemination.

- 6.14** The PR should ensure that the written notification they issue explains and refers to the relevant parts of the legislation regarding legal parenthood and withdrawal of consent.

See also:

- [HFEA consent forms available at www.hfea.gov.uk](http://www.hfea.gov.uk)