

To: All Persons Responsible

29th September 2003

Dear Colleague,

DECEASED FATHERS – REQUIREMENTS FOR BIRTH REGISTRATION

You will have recently received a Chair's letter (CH (03) 06) informing you of changes to the law which will permit a man's particulars to be entered on the birth register for a child who is born as a result of fertility treatment that takes place after his death. I now write to provide further information with regard to the need to contact patients who have gametes or embryos in storage.

Reference was made in the Chair's letter to the need to contact men who already have gametes or embryos (even if created using donor sperm) in storage at your centre with effective consent to posthumous use to inform them of the change in the law. Those men may wish to be registered as the father of any child conceived posthumously and, if so, will need to have given written consent to be recorded as the father should a successful treatment take place after their death. We appreciate that this has imposed a large and unanticipated burden on some centres.

The Act amends the law to allow a deceased man to be recorded in the birth register as the father and places certain requirements on both the father and mother in order for this to happen, which are additional to existing consent requirements for treatment. If these requirements are not met, the man cannot be registered as the father.

Unusually, the provision of the Act that requires a man to give written consent to be recorded as the father of a child resulting from fertility treatment undertaken after his death came into force as soon as the Act was passed. This means that any man who dies after September 18, 2003 **must** have given written consent in order to be recorded as the father of such a child under the Act. A sample letter and consent form are attached for convenience.

Further guidance will follow detailing the full range of requirements and documentation (including requirements placed on the mother) and the process to effect the birth registration. Contacts for further information in the meantime are included at the foot of this letter.

Contacting patients

You will be aware of the need for sensitivity when writing to patients, some of whom may be in the final stages of terminal illness or may recently have died. Nevertheless we suggest that, because the requirement for written consent to be recorded as a posthumous father is not negotiable, you should write first to those known or thought to be at risk of dying in the short term. (Where the man dies after a pregnancy is established he will be able to be recorded as the father on the birth register automatically if he is married to the mother or, if they are unmarried, following the granting of a declaration of parentage.)

In order to avoid causing unnecessary emotional stress to recently bereaved spouses or partners, we suggest that you review the NHS records for any man who you think may have died to establish whether he is still alive and capable of giving consent. Where appropriate, if consent has been given for this purpose, you should contact the patient's general practitioner to confirm that the patient remains alive and capable of giving consent.

Procedure for obtaining consent

Men who have sperm in storage and couples who have embryos in storage with consent to posthumous use should be invited to attend the centre to complete the forms at which time they can be given any additional information that is appropriate. Where they are unable or it is inappropriate for them to attend the centre patients may return the consent by post, keeping a copy for their own records.

Before they give consent patients should be fully informed of the consequences of giving this consent, including the fact that the registration will not confer any additional legal rights on the child, and that those to whom the information may be disclosed may not be subject to the confidentiality provisions of the 1990 Act. Men who have any concerns about the legal position, for example, concerning provision from their estate for children conceived posthumously will need to seek their own legal advice.

In all cases in which patients are informed about the effects of new Act it should be made clear that further support and counselling will be provided by the treatment centre as appropriate and that additional information is available from the treatment centre or from the other bodies listed at the foot of this letter.

How can further information be obtained?

The full text of the Human Fertilisation and Embryology (Deceased Fathers) Act 2003 and explanatory notes can be found on the HMSO website at www.legislation.hmso.gov.uk/acts/acts2003/20030024.htm. Information on specific matters may be obtained from the bodies listed below:

For information about how the law applies to licensed fertility treatments:

Dr Peter Mills
Human Fertilisation and Embryology Authority (HFEA)
Paxton House
30 Artillery Lane
London E10 7LS
020 7377 5077
peter.mills@hfea.gov.uk

For information about the new Act:

Christopher Cox
Department of Health
Skipton House
80 London Road
London SE1 6LH
020 7972 6122
Christopher.Cox@doh.gsi.gov.uk

For information about birth registration/re-registration in England and Wales:

General Register Office
Room D209
Smedley Hydro
Trafalgar Road
Southport
Merseyside
PR8 2HH
Telephone: 0151 471 4805; Fax: 01633 652989
registering.births@ons.gov.uk

For information about birth registration/re-registration in Scotland:

John McCafferty
Casework Manager
General Register Office for Scotland
Room 40
New Register House
0131 314 4456
john.mccafferty@gro-scotland.gsi.gov.uk

For information about birth registration/re-registration in Northern Ireland:

Stanley Campbell
General Register Office
Oxford House
49-55 Chichester St
Belfast BT1 4HL
0289 0252037
Stanley.Campbell@dfpni.gov.uk

Yours Sincerely,

Dr Peter Mills
Policy Manager

Sample letter

I am writing to you regarding changes to the law which will allow a deceased man, in certain circumstances, to consent to being recorded in the birth register of a child born as a result of fertility treatment undertaken after his death. Previously the law has not allowed this possibility.

The Human Fertilisation and Embryology (Deceased Fathers) Act 2003 amends the law to allow a deceased man to be recorded in the birth register as the father. There will be requirements on both the father and mother in order for this to happen, which are additional to existing consent requirements for treatment. If these requirements are not met, the man cannot be registered as the father.

According to our records, you have (gametes/ embryos) stored at this clinic with written consent to their use in the event of your death. I am writing to inform you that in addition to the consent which you have already given, you will also need to consent in writing to being regarded as the father if you should wish to be recorded in the birth register (and on the birth certificate) as the father.

Although the law will allow a deceased man to consent to being recorded in the register of births as the father, it will not confer any inheritance or other legal rights. Men who have any concerns about the legal position, for example, concerning provision from their estate for children conceived posthumously will need to seek their own legal advice.

If you should wish to discuss the contents of this letter, or to give the necessary consent, please contact (contact at clinic).