

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.

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

(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,
- (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

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.

(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.

(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.

Effect of sections 33 to 47

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.

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).

(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

(b) include the relationship of a child with his adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

General

1.1 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 foreign donors, should be informed that the law in other countries may be different from that in the United Kingdom).

1.2 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:
http://www.opsi.gov.uk/acts/acts2008/en/ukpgaen_20080022_en.pdf

Legal fatherhood when the woman has a husband

Interpretation of mandatory requirements

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

Where a married woman is seeking treatment using sperm, or embryos created using sperm, other than the sperm of her husband, the centre must advise that the

woman's husband will be the father of any resulting child unless, at the time of placing the embryo or sperm and eggs in the woman, or her insemination:
(a) the woman and her husband were judicially separated; or
(b) it is shown that the husband did not consent to the licensed treatment that resulted in the birth.

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

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

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

Legal parenthood when the woman has a civil partner.

Interpretation of mandatory requirements

Where a woman in a civil partnership is seeking treatment using donor sperm, or embryos created using donor sperm, the centre must advise those seeking treatment that the woman's civil partner will be the parent of any resulting child unless, at the time of placing the embryo or sperm and eggs in the woman, or her insemination:
(a) the woman and her civil partner had a separation order; or
(b) it is shown that the civil partner did not consent to the licensed treatment that resulted in the birth.

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

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

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

Legal fatherhood: male partner

Interpretation of mandatory requirements

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 father of any child born as a result of this 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 centre must advise those seeking treatment that the male partner can be the father of any resulting child if the conditions outlined in paragraphs 36 and 37, Part 2, HFE Act 2008 are met, including that :

- a) the male partner consents to being the father of any child born as a result of his partner's treatment, and
- b) the patient gives consent to her partner being the father of any child born from her treatment, and
- c) neither of these consents have been withdrawn, and
- d) the patient has not given consent to any other man or woman being the legal parent of any resulting children, and
- e) the patient and male partner are not within prohibited degrees of relationship in relation to each other (as defined in paragraph 58(2), part 2, HFE Act 2008), and
- f) these consents are in writing and signed

'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 with the woman being treated (as defined in paragraph 58(2), part 2, HFE Act 2008).

Legal parenthood: female partner

Interpretation of mandatory requirements

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 centre must advise those seeking treatment that the female partner can be the parent of any resulting child if the conditions outlined in paragraphs 43 and 44, Part 2, HFE Act 2008 are met, including that :

- a) the female partner consents to being a legal parent of any child born as a result of her partner's treatment, and
- b) the patient gives consent to her partner being a legal parent of any child born from her treatment, and
- c) neither of these consents have been withdrawn, and

- d) the patient has not given consent to any other man or woman being the legal parent of any resulting children, and
- e) the patient and female partner are not within prohibited degrees of relationship in relation to each other (as defined in paragraph 58(2), part 2, HFE Act 2008), and
- f) these consents are in writing and signed

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

Parenthood after death of a man providing sperm

Interpretation of mandatory requirements

The centre must advise those seeking treatment, or storage, that the law allows the husband or male partner of a patient to be registered as the father of any child born as a result of treatment after their death, if certain conditions (outlined in paragraph 39, part 2, HFE Act 2008) are met. The treatment can involve insemination of sperm 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.

If a husband or male partner has provided sperm, or embryos created using his sperm, for his wife or partner's treatment (involving placing the embryo or sperm and eggs in the woman, or her insemination) the following conditions must be met in order for him to be registered as the father of any child born as a result of treatment after his death:

- a) the man must give 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, and
- b) the man must give written consent to being treated as the father of any child born as a result of his wife or partner's treatment after his death, and
- c) the woman has elected in writing, by 42 days after the child's birth (21 days in Scotland), 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.

Parenthood after death of a partner who has not provided sperm

Interpretation of mandatory requirements

The centre must advise those seeking treatment, or storage, that the law allows the partner (husband, civil partner or other partner) of a patient to be registered as the father or parent of any child born as a result of treatment with embryos after their death if certain conditions (outlined in paragraphs 40 and 46, part 2, HFE Act 2008) are met. The embryos must have been created while they were alive. The centre must ensure that partners are given an opportunity to consent to this.

General procedures for obtaining consent

1.6 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.

1.7 The centre should take all reasonable steps to ensure the valid identity of all people giving or withdrawing consent who might not often be seen in the centre during treatment. If there is doubt about a patient's identity, the centre should take steps to verify this, including by examining photo ID such as a photocard driving licence or passport. The centre should record this evidence in the medical records.

1.8 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.

1.9 The centre should ensure that any person giving consent declares that:

- they were given enough information to understand the nature, purpose and implications of giving this consent
- they were given a suitable opportunity to receive proper counselling about the implications of receiving treatment following giving consent
- they were given information about the procedure for varying or withdrawing consent
- the information they have given in writing is correct and complete.

1.10 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

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.

Interpretation of mandatory requirements

The law states that sperm donors are not to be treated as the father of any child resulting from the treatment of others.

The law states that egg donors are not to be treated as the second parent unless their eggs, or embryos created from their eggs, are used in treating a civil partner or partner (and where the conditions outlined in paragraph 42, or paragraphs 43 and 44, Part 2, HFE Act 2008 are met) or they adopt the child.

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.

Interpretation of mandatory requirements

The law states that a woman who has consented to her partner being the legal parent of any child born as a result of her treatment can only be treated when she and her partner have:

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

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

- the importance of informing any resulting child at an early age that they were conceived using the gamete of a person (or gametes of people) other than their parent(s), and
- suitable methods of telling the child this.

Notification of withdrawal of consent to parenthood

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

Section 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).”

Interpretation of mandatory requirements

The law requires that if a person withdraws their consent to being the legal parent of any child resulting from the treatment of their partner, the person responsible (PR) must notify the patient in writing of this. The patient must not be treated until she has been notified.

The law requires that if a woman withdraws her consent to her partner 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 partner in writing of this.

1.11 Consent can be withdrawn only if sperm, eggs or embryos have not yet been transferred to the woman.

1.12 The PR should ensure that the written notification issued by the PR explains and refers to the relevant parts of the legislation regarding legal parenthood and withdrawal of consent.

See also:

- HFEA consent forms