

DECEASED FATHERS – HOW TO REGISTER A MAN AS THE FATHER OF A CHILD CONCEIVED AFTER HIS DEATH

Although rare, there are situations where a woman may want to conceive the child of her husband or partner after his death, for example, if the man had sperm stored prior to cancer treatment. The law in the UK has now been changed so that, subject to certain conditions being met, the man can be registered as the father of a child born in such circumstances.

On 18 September 2003, Parliament decided to change the law to allow for a man to be registered as the father of a child resulting from assisted conception treatment (commonly known as fertility treatment) undertaken after the man's death. This change took effect from 1 December 2003, and this guide sets out the legal requirements and process to follow to register the deceased man as the father. These requirements apply whether the assisted conception *treatment* is undertaken in the UK or abroad, although only children born in the UK can be registered here.

Note: Couples who are planning to conceive children in the event of the man's death should read this guide very carefully. **Actions are required of both the man and the woman in life** if they wish for the man to be registered as the father after his death.

The law now allows for the deceased man's name, surname, occupation and place of birth¹ to be entered in the birth register (and on the birth certificate) as the father of the child. This registration does not, however, give the child any legal rights – such as inheritance or nationality. Men who have any concerns about the legal position, for example, concerning inheritance from their estate for children conceived after their deaths will need to seek their own legal advice.

Note: This guide does not apply where a man dies during his wife or partner's pregnancy. Information on registering a birth in those circumstances is available from the local registrar of births and deaths or the General Register Office.

The change in the law applies in any case where the sperm or embryo was used on or after 1 August 1991. This guide is divided into 2 parts:

Part 1 is for:

- Couples who are now considering the possibility of conceiving children in the event of the man's death, and want to enable the man to be registered as the father of any child born in those circumstances, or
- Couples who have already stored sperm or embryos and wish to conceive children in the event of the man's death, and want to enable the man to be registered as the father of any child born in those circumstances.

¹ *The father's place of birth is not recorded on the child's birth entry in Scotland.

Part 2 is for:

- women who have conceived (or will conceive), children after the death of their husband or partner, where he died before 18 September 2003, and wish him to be registered as the father of any child born in those circumstances.

Part 1

This part applies to couples who are considering the possibility of conceiving children in the event of the man's death. For example, where a man is undergoing certain cancer treatment, a couple may decide to store his sperm for use after he recovers, or in case he does not recover. In these types of cases, **actions are required of both the man and the woman** if the couple wish to enable the man to be registered as the father after his death. These actions are set out below.

This part also applies to couples who have *already stored* sperm or embryos and wish to conceive children in the event of the man's death. If these couples want to enable the man to be registered as the father, they need to read through these requirements carefully as many of them are additional to any written consent which the couple have already given.

Assisted conception Centres in the UK which offer storage of sperm, eggs or embryos, *in vitro* fertilisation (IVF) treatment, or treatment with donor sperm, are required to be licensed by the Human Fertilisation & Embryology Authority (HFEA). They are bound by legal duties and responsibilities. Centres are required to obtain written consent to storage of sperm, eggs and embryos and are also required to offer counselling on the implications of infertility treatments.

Couples to whom this guide applies should discuss this matter with staff at their Centre, who are able to provide standard forms for recording the necessary written consent.

(i) Actions for the man

In order for the man to be able to be registered as the father, he must have **consented in writing** (and not withdrawn that consent) as set out in whichever one of boxes **A, B, C** or **D** applies. These boxes cover four different circumstances, according to whether the couple are married or not, and whether donor sperm is used or not.

A. Married couple using the husband's sperm.

Man consents:

- to the use of his sperm or embryo(s) developed in vitro from egg(s) fertilised with his sperm in treating his (named) wife after his death, **AND**
- to being treated as the father of any resulting child for the purpose of recording his name, surname, occupation and place of birth* in the register of births.

B. Unmarried couple using the partner's sperm.

Man consents:

- to the use of his sperm or embryo(s) developed in vitro from egg(s) fertilised with his sperm in treating his (named) partner after his death, **AND**
- to being treated as the father of any resulting child for the purpose of recording his name, surname, occupation and place of birth* in the register of births

Note: In this circumstance, the law states that a man may only be registered as the father where assisted conception treatment services were being provided for the woman and the man together before his death either by a licensed assisted conception centre in the UK, or abroad.

C. Married couple using donor sperm.

Man consents:

- to the placing in his (named) wife after his death of embryo(s) created before his death, **AND**
- to being treated as the father of any resulting child for the purpose of recording his name, surname, occupation and place of birth* in the register of births

D. Unmarried couple using donor sperm.

Man consents:

- to the placing in his (named) partner after his death of embryo(s) created before his death, **AND**
- to being treated as the father of any resulting child for the purpose of recording his name, surname, occupation and place of birth* in the register of births

Note: In this circumstance, the law states that a man may only be registered as the father where assisted conception treatment services were being provided for the woman and the man together before his death either by a licensed assisted conception centre in the UK, or abroad.

Plus, in all circumstances A, B, C or D above, the man will also need to consent in writing to the disclosure of information about the assisted conception treatment undertaken, as certain details about the treatment will be required later to register the man as the father. This consent can be recorded on the standard forms available to assisted conception centres.

Note: Patients should retain a copy for their own records of all consent forms which they sign, and keep them in a safe place. The written consent listed above will need to be produced when registering the man as the father.

*The father's place of birth is not recorded on the child's birth entry in Scotland.

(ii) Actions for the woman

In order for the deceased man to be registered as the father of a child conceived after his death, the woman must sign a written declaration (called an "election") which states that she wishes him to be recorded in the birth register as the father. A standard election form is provided at the end of this guide for this purpose.

Note: There are time limits which apply to the signing of the woman's election. In England, Wales, and Northern Ireland the time limit is 42 days from the day on which the child was born. In Scotland the time limit is 21 days. In exceptional circumstances the election may be made after this time.

The signed election form should then be submitted to the registrar of births together with an application for birth registration (a standard form is included at the end of this guide) along with the supporting documents listed on the application form. These include, for example, the man's written consent as detailed above, and confirmation from a registered medical practitioner of the assisted conception treatment undertaken.

The birth must be registered in the district where it took place, but information can be given to another registrar. All the documents must be given to the registrar before the birth can be registered showing the father's name. Addresses and telephone numbers for local register offices are in the telephone directory.

It is possible to sign the written election before the child is born, and some women may prefer to do so in case they are prevented from signing it later due to illness or incapacity (or in the rare event of death during childbirth). It is a good idea for women to let someone close to them know their wishes with regard to birth registration, in case they become unable to register the birth themselves. The relevant documents can be produced to the registrar by a "qualified informant" where the woman is unable to do so herself due to death or inability. Qualified informants include hospital administrators, someone present at the birth or someone with responsibility for the child.

Once the birth has been registered, the registrar will issue a free short birth certificate (which does not show the names of the parents) and explain how to obtain a full certificate which includes the parents names.

Part II

This part applies to women who have conceived (or will conceive), children after the death of their husband or partner, where he died before 18 September 2003, and they wish him to be registered as the father of a child or children born in those circumstances. The man may only be registered as the father where the sperm or embryo was used on or after 1 August 1991.

The legal requirements in these circumstances differ from those set out in Part 1 with regard to the man's written consent. The passing of the Act on 18 September 2003 meant that new requirements for the man to provide specific written consent apply from that date. However, it would be inappropriate for these new requirements to apply to men who died before the change in the law, and so special arrangements apply in those circumstances. Where the man died before 18 September 2003, there is no requirement (for the purpose of birth registration) for the man to have consented in writing as set out in Part 1.

(i) Actions for the woman

In order for the deceased man to be registered as the father of a child conceived after his death, the woman must sign a written declaration (called an "election") which states that she wishes

him to be recorded in the birth register as the father. A standard election form is provided at the end of this guide for this purpose.

There are time limits which apply to the signing of the woman's election. There are two different limits, depending on when the child was born:

- (1) Where the child was born on or after 1 December 2003 the usual time limit in England, Wales, and Northern Ireland is 42 days from the day on which the child was born. In Scotland the time limit is 21 days. In exceptional circumstances the election may be made after this time.
- (2) Where the child was born before 1 December 2003 the time limit is 6 months from that date i.e. until 1 June 2004. This is because it may take the mother longer to gather the relevant information that the registrar or Registrar General will need [see below]. In exceptional circumstances the election may be made after this time.

For new registrations, the election form should be submitted to the registrar of births together with an application for birth registration (a standard form is included at the end of this guide) along with the supporting documents listed on the application form. This includes, for example, confirmation from a registered medical practitioner of the assisted conception treatment undertaken.

If the child's birth has not been registered and it is more than 12 months since the child was born, an application for registration and the supporting documents must be sent to the Registrar General for him to authorise the registration of the birth. If the child's birth has already been registered without the father's name having been recorded, you should apply to the Registrar General for the birth to be re-registered. You can give the documents to the local registrar and ask him or her to send them to the Registrar General for you or send them direct to the address given for the appropriate General Register Office at the end of this guide.

It is possible to sign the written election before the child is born, and some women may prefer to do so in case they are prevented from signing it later due to illness or incapacity (or in the rare event of death during childbirth). It is a good idea for women to let someone close to them know their wishes with regard to birth registration, in case they become unable to register (or re-register) the birth themselves. The relevant documents can be produced by a "qualified informant" where the woman is unable to do so herself due to death or inability. Qualified informants include hospital administrators, someone present at the birth or someone with responsibility for the child.

Once the birth has been registered, the registrar will issue a free short birth certificate (which does not show the names of the parents) and explain how to obtain a full certificate which includes the parents names.

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/act/acts2003/20030024.htm

Information on specific matters may be obtained from the bodies listed below:

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 PR8 2HH
0151 471 4805
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
Edinburgh
EH1 3YT
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

STANDARD ELECTION FORM

(The Human Fertilisation and Embryology Act 1990 and laws relating to the registration of births and deaths as amended by the Human Fertilisation and Embryology (Deceased Fathers) Act 2003)

Mother's election for the father's particulars to be recorded in the birth register

I(mother's full name) elect that
.....(father's name) be recorded as the
father in the birth registration/re-registration* of our child/children* conceived following a
course of treatment (insemination/transfer of an embryo*) at
.....(name of clinic) beginning
on(date).

I hereby certify:

(i) that this election will not be used for a child or children other than a child or children
resulting from an embryo produced in the course of treatment services provided for myself and
my husband/partner*, or a child or children conceived using the gametes of my
husband/partner*, named above.¹

(ii) that my husband/ partner* did not withdraw his consent to being named as the father in the
child's birth registration.²

Signed(mother). Date.....

* delete as applicable

¹ This form may be used to elect for the registration of the mother's late husband or partner as the father of the child/children conceived after his death and following treatment received by him and the mother together. No other man is to be registered as the father of the child.

² Not applicable where the man died before 18 September 2003.

STANDARD APPLICATION FORM

Application for registration or re-registration of birth

Mother's full name(s)

.....

Mother's address

.....

.....

Child's date of birth

Child's place of birth

If applying for re-registration:

Child's name as recorded in the initial registration.....

Surname by which the child is now to be known.....
(this cannot always be changed in the birth register)

Father's name(s)

Father's place of birth.....

Father's occupation
.....

Father's date and place of death
.....

(death certificate to be supplied if death occurred outside the country¹ where the child was born)

*Date and place of first treatment (sperm/embryo storage)
.....

(copy of father's consent to be supplied if the father died on or after 18 September 2003).

*Date and place of treatment leading to pregnancy
.....

(doctor's certificate to be supplied confirming the fertility treatment undertaken)

If married to child's father at the time of his death:

date and place of marriage.....
(marriage certificate to be supplied if outside the country¹ where the child was born)

Signed **Date**

*See below for further information about the above-mentioned documentary evidence.

Documentary evidence to be submitted with the completed application form

- The man's written consent to the use of his sperm or transfer of embryo(s) after his death, and to being named as the father in the child's birth registration.²
- Confirmation from the treatment clinic that the man's consent had not been withdrawn at the date of death.
- Written confirmation from a registered medical practitioner of the assisted conception treatment giving the name of the man with whom the mother was being treated, e.g from the treatment clinic, the woman's own doctor, or a hospital doctor.³
- A certificate of the man's death if it occurred outside the country¹ where the child was born (a photocopy is not acceptable as evidence).
- Where appropriate, a certificate of the marriage if it took place outside the country¹ where the child was born (a photocopy is not acceptable as evidence).

¹Country means either England and Wales, or Scotland, or Northern Ireland according to whichever of these countries the child was born in.

²Where the man died before 18 September 2003, evidence of such written consent is not mandatory.

³Where the medical practitioner is unable, for example due to data protection restrictions, to confirm the father's involvement, the Registrar General may undertake an additional check with HFEA records. This is especially likely to be the case where the man died before 18 September 2003.