

THE LAW - CONCEPTION USING DONOR EGGS OR SPERM

Introduction

If you are trying to conceive with donor eggs or sperm, either one or other of you will not have a genetic link with your child. This will explain how the law applies to you as any future child's parents, and to the donor who helps you to conceive.

Who will be the child's mother?

Under UK law, a woman who carries and gives birth to a child is recognised to be their legal mother. This means that, if you conceive using donor eggs and carry your child, the egg donor is not legally recognised. You would be the child's mother.

We are a lesbian couple, what are our legal rights?

If you are in a civil partnership you have the same legal rights as a married couple. You can both be named on your child's birth certificate which gives you both full parental rights and responsibilities for your child.

If you are not in a civil partnership you will both need to sign 'parenthood consent forms' and both be present at the registration of your child's birth to enable you both to be named on your child's birth certificate.

I am married and we intend to use donor sperm or donor embryos in our treatment who will be the child's father?

Your husband will automatically be recognised as the father of the child, unless he explicitly states that he does not consent to your treatment. There is a section in the new parenthood consent forms that asks this question.

If you have treatment using donor sperm or embryos created with donor sperm and your husband has explicitly stated in the form that he does not consent to your treatment, he will not be the father of any child born from your treatment. The child will have no legal father.

Whose name will be on the birth certificate?

If you are married, your husband will, be named on the birth certificate whether or not he is present at the birth registration. He will automatically have parental responsibility for a child conceived through this fertility treatment. This will give him full legal parental rights.

We are not married and intend to use donor sperm or embryos in our treatment, who will be the child's father?

If you are an unmarried couple using donor sperm, the male partner will be the legal father of any child conceived, provided that fertility treatment is given to you 'together' as a couple. Like all unmarried fathers, you will only have parental responsibility for your child if you are named on the birth certificate. To have full parental responsibility, you must be present at the birth registration together with the child's mother, and named on the birth certificate.

What if I can't be present at the registration of the birth?

If you are not named on the birth certificate, you will not have parental responsibility for your child, which means that you will have:

- no legal right to make decisions about your child's welfare (for example in giving medical consent or in influencing your child's education) and,
- no automatic right to care for your child if your partner dies

Can this situation be changed?

Yes. As your child's legal father, you can acquire parental responsibility at any time, either by signing an agreement with your child's mother or by applying to court for a parental responsibility order.

What is the donor's legal position?

The donor has no legal rights, will not be the legal parent and will have no parental rights, claims or responsibilities. The donor cannot be pursued by you for financial contribution to your child's upbringing.

What if I know the donor, or he / she is a member of the family?

If you undergo treatment at a licensed clinic with a donor, the donor will have no legal rights even if they are a close friend or member of the family and intend to have some practical involvement in the child's upbringing.

I/we intend to use a known sperm donor, what rights will they have?

The law specifically states that the husband / male partner of the couple being treated and 'no other person' will be the legal father of any future child. If the donor intends no significant ongoing involvement after the conception, and he has donated through a licensed clinic, he is legally in the same position as an anonymous donor. This means that if you are a single woman or in a lesbian relationship, your child will have no legal father.

What if my intended sperm donor intends to be involved with the child?

If you enter into treatment with a known donor, and the donor intends to act as the child's father, his name should be on the child's birth certificate. He will not have parental responsibility for your child unless you choose to name him. At any date in the future, he would have the right to apply to court to acquire parental responsibility. You will be able to seek financial contribution from him for your child's upbringing. To ensure that there is a mutual understanding as to what each expects from the arrangement at the start, we strongly advise you to seek legal advice before entering into such an agreement.

What are my child's legal rights?

The law was changed from 1 April 2005 to allow donor-conceived children access to information about the genetic origins of their donor. Once your child reaches the age of 16, he or she will be able to apply to the Human Fertilisation and Embryology Authority for non identifying details of his or her donor. Once your child reaches 18, identifying information will be available. Before the HFEA will give out any information, your child must be given a suitable opportunity to receive counselling. Your child will have no legal claim, rights or responsibilities on or to any donor. In other words, they will not be able to claim inheritance nor a right to the donor's estate should the donor die.

What information will my child be given about the donor?

Your child can apply to the authority before they are 18 if they want to find out whether someone they intend to marry is genetically related to them. The non-identifying information on the donor that will be available to them is:

- Date of birth
- Height
- Weight/build
- Ethnic group
- Eye colour
- Hair colour
- Skin colour
- Whether the donor already had children prior to donating

Also, if the donor has provided the information:

- Religion
- Occupation
- Interests
- A description of the donor's personality written by him or herself

Will any of this information be changed in the future?

Yes it will. In **2022** i.e. eighteen years after 2004 the above list will be extended to include:

- Screening tests done at the time of donation
- Personal history
- Family history
- Any additional information the donor wished to provide at the time

From **2023** the HFEA will be required to provide (after appropriate counselling and notification to the donor) all the above information to any child conceived after 1st April 2005, and in addition:

- The donor's name
- Address at date of donation
- Address at date of birth

What non-identifying information will I/we be given about the donor?

You will be given basic **non-identifying** information about the donor. This will be their:

- Height
- Weight/build
- Ethnic group
- Eye colour
- Hair colour
- Skin colour
- Whether the donor has children

Also, if the donor has provided the information:

- Religion
- Occupation
- Interests

What identifying information will I/we be given about the donor?

There is no plan to make **identifying** information about donors available to couples undergoing treatment at any time. It is important to understand that the new right to information belongs to your child once he or she is 18, and not to you as the parents. It has no impact on either your, or on the donor's, legal rights and responsibilities.

I do not know the donor. What information will they be given about me?

None. The donor has no right to know anything about you, and to disclose identifying information is a criminal offence.

References

Human Fertilisation and Embryology Authority. 7th Code of Practice (2007)

Human Fertilisation and Embryology Bill (1991)

Ed: Hammer, Burns & Covington, Infertility Counselling, A Comprehensive Handbook for Clinicians. (2000)

Further Information

Human Fertilisation and Embryology Authority. 21 Bloomsbury Street, London, WC1B 3HF

Tel: 020 7291 8200 Fax: 020 7291 8201 www.hfea.gov.uk They will give you further up to date information about the legal aspects of conceiving with donor sperm or eggs. This is particularly important as the new HFEA Bill came into force in 2009.

British Infertility Counselling Association will provide information about finding a local counsellor who you can talk through some of the issues with. Contact www.bica.net or contact 01372 451626

Donor Conception Network. PO Box 7471, NOTTINGHAM, NG3 6ZR.

Contact: 020 8245 4369 or www.donor-conception-network.org The organisation will give you further useful information on donor conception.