

LGBTQ+ Parenting Rights

Trans parenting rights

The laws on parenting rights when a child is conceived through artificial insemination place a focus on biological sex rather than gender identity.

Legal parents for children conceived through donor insemination

The Human Fertilisation and Embryology Act (2008) sets out who a child's legal parents will be when conceived through donor insemination. This legislation was particularly significant for same-sex couples as it allowed, for the first time, a child to have two mums or two dads named as legal parents.

Under UK law, a child can only have two legal parents although a number of people can hold parental responsibility. For children conceived through donor insemination, who the legal parents are will depend on the circumstances at the time a child is conceived.

Fertility law experts Natalie Gamble Associates provide useful information on how these rules apply to trans people on their website;

- [Transgender conception and legal parenthood](#)
- [Preserving fertility before gender transition](#)

Adoption and fostering

The Law

In November 2002, the Adoption and Children Act passed into law and, for the first time, allowed unmarried couples, including same-sex couples, to apply for joint adoption. You can also adopt as an individual. The Act came into effect on 30 December 2005.

Lesbian, gay, bisexual and trans people are protected from discrimination under the Equality Act, 2010. This means an adoption agency must assess you fairly, using the same criteria. They could not turn down an adoption application just because the applicant was LGBT.

How to adopt

Applications for adoption must be made to an adoption agency. These may be run by the local authority or an approved agency. The adoption assessment is lengthy and thorough. If you are a couple applying to adopt you will both be assessed, and will need to demonstrate the stable and enduring nature of your relationship.

Following a successful assessment the application is referred to an Adoption Panel. If you are approved by the Panel, you will go through a matching process. This involves a child or young person being placed with you. Depending on the success of this placement, an application can be made to the court for an adoption order. At this stage further reports will be placed before the court to help them reach a final decision.

Adoption leave

Once a child has been placed with them the couple must decide which one of them will elect to take adoption leave (the 'primary adopter'). The other will normally be entitled to paternity leave. If the primary adopter returns to work before the end of their adoption leave entitlement, the remaining period of adoption leave can be shared between the two adopting parents, in accordance with the rules on Shared Parental Leave

Fostering

Lesbian, gay, bisexual and trans people are also eligible to foster, as individuals or as a couple. Fostering involves providing a home for a young person who cannot live with their parents because of problems with their families, or because they are going through a difficult period of their life. There are several types of fostering; some foster parents provide emergency or short-term placements for children while problems are resolved, and others provide long-term foster care. For some people fostering is a route into adoption. People applying to become foster parents will experience a similar process to those applying to become adopters, and it takes about six months.

Co-parenting

Fertility law and co-parenting options

What is co-parenting?

Co-parenting is where two people agree to conceive and raise a child together when they are not in a relationship. Each person may have their own partner, so it's possible that a child has more than two parents or carers. In the UK, a child can only have two legal parents, even if more adults are involved in their up-bringing.

A child's legal parents are usually its biological mother and biological father. The Human Fertilisation and Embryology Act (2008) sets out who a child's legal parents will be when they are conceived through artificial insemination. It allows co-parenting for same-sex couples.

Co-parenting arrangements with single women

If a man in same-sex relationship donates his sperm to a single woman with the intention of co-parenting any resulting child, it is likely that he will be treated as the child's legal father. If named on the birth certificate, he will also have parental responsibility for the child, and so the right to be involved in key decision-making in the child's upbringing.

His partner may also be able to acquire status in respect of the child and there are a number of options:

- If the couple are civil partners or married, they may sign a parental responsibility agreement (together with the birth mother) to confer parental responsibility on the father's partner. This will give the non-biological father authority to make parental decisions, although he will not be treated as a parent for the purposes of inheritance, making it important for him to put in place a will.

- If the couple are not civil partners or married, they may be able to apply for a joint residence order, again giving the non-biological father parental responsibility.

Adoption is unlikely to be a suitable option, because one of its effects would be to extinguish the birth mother's legal status as a parent, and this is usually not appropriate in co-parenting situations. Those involved in the arrangement may wish to consider exploring their options and putting in place a co-parenting agreement. If there is a breakdown in the co-parenting relationship (or in the relationship between the fathers), the court will have powers to make orders in the best interests of the child. The various parties involved may have different rights to make different types of applications to the court, depending on the circumstances.

Co-parenting arrangements with female couples

The legal position regarding co-parenting arrangements where a man/ same-sex couple donates sperm to a female couple is more complex. Following the changes implemented by the Human Fertilisation and Embryology Act 2008, female couples who are in a civil partnership, or who are married when they conceive with donated sperm will automatically become legal parents of the child.

In this situation, the biological father would not be considered a legal parent but would be able to apply for parental responsibility. If the female couple he is donating to are not civil partners, the rules differ. If the child is conceived through a UK licensed fertility clinic the mothers would be able to choose whether they wish the child's second parent to be the father or the non-birth mother. If the child is conceived outside a UK licensed fertility clinic the biological father is likely to be viewed as the second legal parent. Such situations are complex and legal advice is recommended.

Donor insemination and fertility treatment

This guidance has been written for same-sex female couples who are planning to conceive a child through artificial insemination. For more information on how the rules apply to trans people please see our page on Trans Parenting Rights.

What is donor insemination?

Donor insemination involves using donor sperm. This can be obtained by using an anonymous sperm donor (from a sperm bank), or using a known donor or a friend. All information below is for babies that are conceived, through donor insemination, after 6 April 2009 when laws changed affecting the rights of same-sex female couples. In the UK, women can inseminate through a licensed fertility clinic or at home. Depending on which method you use there are implications with regards to legal parenthood.

For couples in a civil partnership or marriage

If a baby is conceived in a UK licensed fertility clinic or at home and the couple are in a civil partnership or married, then the non-birth mother will automatically be the second legal parent and will be named as such on the birth certificate. The donor will have no legal parenthood status.

For couples not in a civil partnership or marriage

If a baby is conceived in a UK licensed fertility clinic and the couple are not in a civil partnership or married, they will need to complete a simple form at the clinic for the non-birth mother to be the legal parent, and to appear on the birth certificate. The donor will have no legal parenthood status.

If the baby is conceived outside of a UK licensed fertility clinic and the couple are not in a civil partnership or married, the non-birth mother must apply to adopt the child to gain legal rights.

Fertility treatment

For many, the first place to go for information about fertility treatment is their GP. They can give you advice on the services available, help with health checks, and advise you whether you'll be eligible for NHS fertility funding. NHS funding for fertility treatment is limited for everyone, and what is available varies from place to place, with criteria set by each area's Clinical Commissioning Group (CCG).

Until February 2013, there was no official guidance on what NHS funding should be offered to same-sex female couples seeking fertility treatment. Now CCG's can refer to guidelines published by the National Institute of Clinical Excellence (NICE). This guidance offers NHS trusts best practice for the assessment and treatment of people with fertility problems. For the first time, these guidelines set out what same-sex female couples can expect when looking for fertility treatment.

What does the NICE guidance say?

NICE's new guidance says that couples must attempt to conceive before being considered for NHS treatment. Opposite-sex couples are expected to try and conceive through sexual intercourse for two years before being considered. This is obviously not an option for female same-sex couples.

The NICE guidance therefore expects female same-sex couples to have tried to conceive six times using artificial insemination (funded themselves, not by the NHS) before they would be considered for NHS-funded fertility treatment. The guidance does not stipulate whether couples need to try to conceive using a fertility clinic, or whether attempts to conceive at home with donor sperm makes you eligible for NHS treatment. This is a decision for your local NHS trust to make. Many NHS trusts will require same-sex couples to use fertility clinics to conceive before considering funding treatment, meaning many same-sex couples will need to pay fees before being eligible for NHS funded treatment.

Why might I be expected to pay for fertility treatment?

Your NHS trust will make its own decision about whether they expect you to try to conceive six times at a clinic (for a fee) or at home (for free). Stonewall expects many trusts to say you have to try to do so at a clinic, as they will want you to try to conceive using a safe and clinically effective method of conception, using approved and tested sperm.

Other criteria

Even if you have tried to conceive six times, you still may not be eligible for NHS funded treatment in your local area. Your local NHS trust will have a number of other criteria that you may also need to meet before they will fund treatment. These can include things like your age, whether you smoke, and other lifestyle factors such as alcohol consumption and levels of fitness. It is therefore important to find out what your local NHS trust's criteria on funding fertility treatment before beginning the process of conceiving. The law is clear, however, that these criteria should apply equally to opposite-sex and same-sex couples – it would be unlawful for a trust to deny you fertility treatment simply because you are a same-sex couple.

Surrogacy

What is surrogacy?

Surrogacy is where a woman carries a child for intended parents and relinquishes her parental status upon the birth of the child. This is commonly an option for male same-sex couples who wish to have a child together without sharing responsibility with the child's mother/s.

Surrogacy and the law

Surrogacy arrangements (involving opposite-sex couples, single men, and same-sex couples) are legal in the UK, however the law prevents arrangements being brokered on a commercial basis, and makes it an offence to advertise for a surrogate mother. The UK's close regulation of surrogacy can make travelling abroad seem attractive, since surrogates and donor eggs may be more widely available in certain countries. However, it is important for couples to be aware that, whether they conceive at home or abroad, English law on parenthood applies. International surrogacy arrangements can be legally complex, and should not be entered into without legal advice. Under English law, the surrogate is always treated as the legal mother of a child at birth. If the surrogate is married or in a civil partnership, her husband/civil partner is treated as the child's second parent. This excludes the intended father(s) from having any legal status at birth. If the surrogate is not married or in a civil partnership at the time of conception, the biological father will usually be treated as the child's legal father.

Parental orders

Couples who enter into a surrogacy arrangement may apply to the court within six months of their child's birth for a 'parental order' to acquire parenthood. Parental orders are designed specifically for surrogacy situations, and have the effect of extinguishing the status of the surrogate mother (and her husband, wife or civil partner), and granting full parental status to the applicants.

Following the grant of a parental order, the child will be issued a new birth certificate naming the applicants as the child's parents. Same-sex couples are able to apply regardless of whether or not they are civil partners or married, but they must be in a relationship. Single men remain ineligible.

TO OBTAIN A PARENTAL ORDER, THE COURT WILL HAVE TO BE SATISFIED THAT THE FOLLOWING CONDITIONS HAVE BEEN MET:

- One of the applicants is the child's biological father.

- The applicants are over 18 and are applying as a couple within six months of the birth.
- At least one of the applicants is domiciled in the UK.
- The child is in their care at the time of the application.
- The surrogate mother (and her husband, wife or civil partner) consent fully and freely to the order being made.
- The surrogate mother has not been paid more than reasonable expenses or, alternatively, the court agrees to authorise any payments which have been made.
- Surrogacy arrangements are legally complex and the courts consistently recommend that anyone considering embarking on surrogacy obtains specialist legal advice at the outset.

Parental responsibility

What is parental responsibility?

In England and Wales parental responsibility is defined in law as “all the rights, duties, powers, responsibilities and authority which by law a parent has in relation to the child and their property”. Having parental responsibility for a child means you can take decisions about matters such as their education, their religion, where they should live, whether they can leave the country and their medical treatment.

Who has parental responsibility?

A child can only have two legal parents but there is no limit to the number of people who can share parental responsibility.

LEGAL PARENTS

A child’s birth mother will automatically have parental responsibility. A child’s legal parent, who is named on their birth certificate or adoption certificate, will have parental responsibility.

NON-BIRTH MOTHERS AND CO-PARENTS

Non-birth mothers, who are not considered legal parents but who are married or in a civil partnership with the birth mother, can acquire parental responsibility by signing an agreement with the birth mother. In all other circumstances parental responsibility can be acquired by applying, through a family court, for a child arrangement order.

Legal parenthood

What is legal parenthood?

A child can only ever have two legal parents, however it is possible for more than two people to have parental responsibility.

The key implications for being a child's legal parent are:

- if they are named on the birth or adoption certificate they will have parental responsibility
- they have financial responsibility, which can include paying child maintenance
- they can confer rights such as nationality and inheritance entitlements to their child.
- Legal parents

The following rules apply for children conceived through donor insemination on or after 6 April 2009:

- Under UK law a child's birth mother will automatically be their legal parent when they are born, even if they are not their biological mother.
- A child's second legal parent, at birth, will depend on the circumstances at the time of their conception.
- The birth mother's civil partner or spouse will be considered legal parent, and can be named on the birth certificate, if they were married or civil partners at the time of conception.

A child conceived through a UK licensed fertility clinic:

- The birth mother can sign an agreement through the clinic to name her partner (if they are not married or in a civil partnership) and/or the biological father (if the donor is known) as second legal parent.

A child conceived outside a UK licensed fertility clinic:

- If the birth mother is not married or in a civil partnership at the time of conception, the second legal parent, under UK law, will be the donor father. They will have parental responsibility if they're registered on the birth certificate.
- It is possible for the birth mother's partner to become a legal parent by applying to adopt. They can also acquire parental responsibility.
- The first step in applying to adopt your partner's child is to inform your local council. They should be able to give you more information on the process.

Family leave and pay

Maternity leave

This is only a summary of the statutory rights and many companies provide more generous leave options.

The person giving birth to the baby is entitled to the following maternity leave and pay:

- They must take the first two weeks off following the birth of the baby (four weeks if they work in a factory)

- They are entitled to 26 weeks Ordinary Maternity Leave. If they return to work during this period they will be entitled to return to exactly the same job they had before they took maternity leave
- They can then take a further 26 weeks of Additional Maternity Leave. If they take more than 26 weeks leave, they have the right to return to the same job unless it is no longer available. In this instance they must be given a similar job with the same pay and conditions
- For the first six weeks of maternity leave they are entitled to 90 per cent of their average weekly earnings before tax
- For the following 33 weeks they are entitled to statutory maternity pay, which is currently £151.97 per week, or 90 per cent of average weekly earnings (whichever is lower).

Paternity leave

Those entitled to paternity leave include the spouse, civil partner or partner of the person giving birth or primary adopter, who will share responsibility for the child's upbringing.

- Leave entitlement is two consecutive weeks of Ordinary Paternity Leave during the 56 days following the child's birth. You can choose to take the full two weeks or just one week but you must take this leave in one go.
- During Ordinary Paternity Leave the pay entitlement is 90 per cent of average weekly earnings before tax, or statutory paternity pay, whichever is lower.
- For parents of babies born on or after 5 April 2015, Additional Paternity Pay has been replaced with the system of Shared Parental Leave.

Shared parental leave

Parents of children born or placed for adoption (whether by birth, adoption or surrogacy) will be able to take Shared Parental Leave (SPL) during the first year of the child's life, or the first year after their placement for adoption.

- Leave entitlement is 50 weeks of Shared Parental Leave and 37 weeks of Shared Parental Pay between you.
- The leave must be shared in the first year after birth, or after the child is placed with your family.
- Shared Parental Leave can be taken in blocks between periods of work or all in one go. It's possible to stagger the leave and pay or to be off at the same time.

Adoption and surrogacy leave

Parents who are adopting a child, and parents who apply for a parental order in relation to a child born under a surrogacy agreement, will be entitled to the same leave and pay.

- Individuals or couples who have a baby placed for adoption with them, and couples who apply for a parental order in relation to a child born to a surrogate are entitled to adoption and surrogacy leave if they meet certain [eligibility criteria](#).
- They are entitled to 52 weeks statutory adoption leave. If the primary adopter returns to work before the end of their adoption leave entitlement, the remaining period of adoption leave can be shared between the two adopting parents, in accordance with the rules on Shared Parental Leave
- For the first six weeks of adoption leave, Statutory Adoption Pay is 90 per cent of their average weekly earnings before tax.
- For the following 33 weeks, Statutory Adoption Pay, is £151.97 or 90 per cent of their average weekly earnings before tax, whichever is lower

Parental leave

In addition to leave at the time of a child's birth or adoption, birth parents, adoptive parents and those who have parental responsibility for children are entitled to unpaid leave to care for their child, at any time before the child's fifth birthday (or their 18th birthday if the child is entitled to disability living allowance). The entitlement is 18 weeks leave, to be taken in weekly blocks. This applies to each child, so for example an employee with two children would be entitled to 36 weeks parental leave per year.

Like maternity, paternity and adoption leave, notice must be given to take parental leave, so it is not suitable for use in an emergency. In such a case, the right to unpaid time off for dependants should be used.

Time off for dependants

Employees are entitled to take a reasonable amount of unpaid time off work to deal with emergencies affecting their dependants, including children, parents and spouses. Emergency situations include illness, an unexpected breakdown in childcare arrangements, or an unexpected incident at a child's school. The employee must notify the employer as soon as reasonably practicable of the reason for their absence, and when they expect to return.

Flexible working

An employee with 26 weeks continuous service can make a written request to change their work hours, the times they are required to work, or their place of work (i.e. working from home). Employers must deal with requests in a reasonable manner, and can only refuse on one of eight statutory grounds, such as the cost of making changes, or inability to reorganise work among other staff.

Ante-natal appointments

Pregnant women are entitled to paid time off to attend ante-natal appointments. Spouses, civil partners and partners of pregnant women, and expectant fathers, are also entitled to unpaid time off to accompany a pregnant woman to an ante-natal appointment. This is limited to two occasions of no more than six and a half hours, notice of which must be given to the employer in advance.

