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Females in Civil Partnerships automatically acquire Parental Rights ***The Human Fertilisation and Embryology Act 2008***

Whether you followed its passage through the House of Commons or cringed at the suggested amendments by the House of Lords, The Human Fertilisation and Embryology Act 2008 (“the Act”) received royal assent and will become law. A little explored part of this Act is already in force however and it has a substantial impact upon the LGBT community for lesbian or gay couples wishing to have children through fertility treatment.

There is little social awareness of parenting by gay couples, however the new Act effectively starts to bring into line their parenting rights to those of a heterosexual couple entering into fertility treatment.

Section 42(1) allows a lesbian couple (A and B) who are in a civil partnership, at the time of placing the embryo, sperm, eggs or the artificial insemination of A, an automatic right to have both A and B on the birth certificate recorded as parents, unless it can be shown that B did not consent at the time of insemination. This is obviously good news as the partner of the mother does not now need to apply to the court for parental responsibility.

Where the same lesbian couple (A and B) are not in a civil partnership, A is not married to the biological father at the time of insemination and B consents to the insemination of the child, then B can be placed on the birth certificate as the “other parent” instead of the father. This is a subtle change from before, as now this can happen even where the father is known to the parents and so he will never receive parental responsibility for the child in the first instance. The on-going financial maintenance of the child is thus a further topic of discussion to explore as the act is applied.

The new law does not extend the same option however for gay male couples as the Act regulates fertility treatment of the mother rather than parental responsibility directly. In tangent to this, there remains an assumption that the woman giving birth to the child is going to be the primary carer not the father (who is not always placed on the birth certificate) and so only the mother gets an automatic right to parental responsibility. Gay couples will have to revert to current law where, now in contrast to a lesbian couple that conceive through fertility treatment, they must apply to a court to get an adoption order by consent from the surrogate mother who has automatic parental responsibility. This should not be considered as daunting as it sounds however if all parties agree to the adoption then it can be relatively quick in comparison to the standard adoption process and will remove any mother from a position of responsibility or obligation.

As you can see, this piece of legislation ultimately benefits lesbian couples to a much greater extent than it will for gay men mainly due to the fact that the Act is to regulate fertility treatment rather than surrogacy or parental responsibility directly. A further or more significant overhaul in the immediate future to remedy the evident discrepancies would be unexpected; however this legislation should still be hailed as wonderful progression in the area of family law for the LGBT community.

Sarah Wood-Heath - Family/child Solicitor

Specialises in all family, civil partnership, child & cohabit areas of law. She handles prestigious clients & complex matters including those involving foreign assets or overseas partners or children. However, each matter small or large is handled in a professional & yet sensitive way. We offer a free chat with all of our team before deciding on whether to instruct us.



Please contact her on:

Tel:0207 426 0382 Email: enquires@acitylawfirm.com Web: www.acitylawfirm.com