

BIRTH RIGHTS

IF It's a different legal world for lesbian mums-to-be, reports **Natalie Gamble**, Britain's leading expert on UK fertility laws. **Photo Zachary Culpin**

It's astonishing how much things have changed in the last five years. In the time it's taken for my daughter to transform from a squealing newborn to a ponytailed schoolgirl, my partner and I have gone from being strangers in the eyes of the law to being married (almost) and equal legal parents – even if that's involved a lengthy adoption process. It's incredible when I think back to how hard it was for us to find a fertility clinic to treat us.

If the government's changes to the Human Fertilisation and Embryology Act become law, this will be the icing on the cake. I see the changes as the final step of a legal revolution, and they're close to my heart, both as a mum and a legal adviser to so many lesbian parents-to-be.

The Human Fertilisation and Embryology Bill would allow a lesbian partner to be named as a donor-conceived child's 'other parent' on the birth certificate. For the first time in UK legal history, this would give same-sex couples full recognition as equal parents from the moment of conception. It would be unnecessary to go through a lengthy adoption process after the birth. Though this matches the law for straight couples who use sperm donors, it's an enormous leap. What's amazing is that if you are civil partners you won't even have to conceive through a clinic for the rules to apply.

If you are conceiving with a known sperm donor, the changes will also give you protection, since if your child has two mothers he or she won't have a father as well. This will protect civil partners using known donors from unwanted interference, and will equally protect private donors from financial responsibility (something we've seen in the news lately with the case of client Andy Bathic, the sperm donor being pursued for maintenance payments by

the lesbian couple he donated to).

Sadly, though, the Bill has kicked up a storm of opposition and the proposals look set to continue getting a rocky ride in parliament. But they made it through wrecking amendments tabled in the House of Lords and, but now face a potentially difficult House of Commons. Though the government has a good track record of getting gay rights legislation through, the reforms have opponents in both main parties, and now 45 Labour MPs have signed a motion describing the Bill as 'misinformed'.

What seems to be causing the most controversy is the government's proposal to delete the obligation of fertility clinics to 'consider the need of the child for a father' before offering fertility treatment. Catholic church leader Cardinal Murphy-O'Connor has described this as 'profoundly wrong' and ex-Tory leader Iain Duncan Smith as 'the last nail in the coffin of the traditional family.' I defended the government's proposals on the Radio 4 *Today* programme, arguing against Baroness Deech, the peer who put forward the wrecking amendments. Though her amendments were rejected by the Lords (who voted instead to require clinics to consider the child's need for 'supportive parenting'), her argument that the government should not make a broad statement that 'Fathers really aren't necessary' is likely to be revived in the Commons. The debate isn't over yet.

SURPLUS TO REQUIREMENT

I'd like to set the record straight. Those arguing to keep the 'need for a father' wording don't seem to realise that deleting it is not going to give lesbians the ability to have children without fathers for the first time.

The 'need for a father' requirement was introduced in 1991 to deter fertility clinics from treating single women and lesbian cou-

A HISTORY OF LESBIAN CONCEPTION

1991
Donor insemination clinics have to consider a child's 'need for a father' before offering treatment. Most regard this as a ban for lesbians

2003
Human Fertilisation and Embryology Authority say it's fine for fertility clinics to treat lesbians and single women

2006
Change in adoption law creates first UK children with two legal mothers

April 2007
New regulations make it illegal for clinics to discriminate against lesbian couples

October 2007
Human Fertilisation and Embryology Bill introduced to parliament, including new rights for lesbian parents

ples (it was never an outright ban), and for years it succeeded. When we conceived our daughter in 2001, the London Women's Clinic was one of only two clinics in the UK brave enough to offer treatment. But the interpretation of the law has changed radically over the last few years, with more fertility clinics opening their doors and with fertility regulator the Human Fertilisation and Embryology Authority endorsing this in 2003. Lesbians are already having fertility treatment, and the requirement of clinics to 'consider the need for a father' before giving treatment is almost impossible to apply in the light the government's wider anti-discrimination legislation. This makes it unlawful for clinics to deny treatment on the grounds of sexual orientation. Its deletion is probably the least controversial of the government's proposed reforms.

The far more important changes are the legal parenthood provisions; this is what will make a real practical difference to lesbians starting a family. However, even if these changes go through, it's important to realise that they'll only apply to children conceived after they are in force. For those conceiving now – and probably for the next two years or so – the current law applies.

Under the current law, the non-birth mother isn't legally a parent. This is true even for civil partners, which many couples don't realise. To give some examples of why this could be important, the non-birth mother has no automatic right to look after her baby if her partner dies in childbirth. If both partners die while their child is young, the child will have no right of inheritance from the non-birth mother. If the couple splits up, the non-birth mother could have no right to contact, or any obligation to pay maintenance.

If you're conceiving a child together,



thankfully you can redress the current legal situation by acquiring joint parental rights (through appropriate Wills, parental responsibility and the adoption process). It's critical to get specialist advice, and for the best protection you need to take action before and after your baby is born.

The other potential legal minefield under the current law is the legal rights of the donor. Since the non-birth mother currently isn't a parent, this leaves it open as to whether or not the donor is the legal father.

The situation is safest legally if you conceive with an unknown donor from a sperm bank by IVF or IUI. The child is then legally fatherless. The donor has no parental rights, and of course in practice you don't know who he is, so there's no risk of him getting too involved later on. Your child does now have a right to find out the identity of the donor once he or she reaches 18.

FATHER FIGURES?

The alternative is to find a donor yourselves to conceive or co-parent with by private arrangement. Private arrangements work well for many, but it's important to understand the legal risks involved. Since the donor is currently the legal father, he

could later interfere in the upbringing of your child. In a case last year in the UK, a donor sought more involvement than the mothers wanted, and the court gave him the right to be involved in his child's upbringing. More frighteningly, in Ireland, a donor is currently fighting the lesbian

It's not all child's play
Securing your family's future means being well aware of the legalities. Natalie Gamble with her children at home in Hampshire

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couple he donated to for full custody of their child – and is expected to win.

If you're conceiving by private arrangement, there's no automatic protection against these risks in the current legal environment, but they can be managed with the right advice. You can adopt your child after the birth to extinguish the donor's rights, and can sign a donor agreement to

give you some protection in the meantime. If you're seriously concerned, a further option is to take your chosen donor to a licensed clinic. If you organise things properly (and you do need to take care with this, which most clinics don't realise), you can exclude the donor's rights entirely from the moment of conception.

The law is incredibly complicated for lesbian parents – remarkably few lawyers really understand it – and many couples don't think about the legal issues carefully enough until something goes wrong. This is why the government's proposed reforms are so important, and I hope that it is as strong-minded in pushing through its fertility law reforms as it has been with other gay rights legislation in recent years.

In the meantime, if you're thinking of starting a family, be aware of your legal vulnerability and tackle it head on with the best advice. As I've learned as a mum and as a lawyer, those of us pioneering lesbian conception need to be savvy about our rights, and the steps we need to take to protect ourselves. **D**

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