

Legal issues for transgender fertility parents

Hormone therapy and gender reassignment surgery affect fertility and so, like cancer patients having chemotherapy, transgender people are often encouraged to consider fertility preservation treatment before transitioning. A female to male (FTM) trans man may want to save and store his eggs, and a male to female (MTF) trans woman may want to save and store her sperm. The timing often needs careful medical planning alongside other treatments, but medical issues aside, how does UK law affect trans fertility patients, both when storing gametes (eggs or sperm) and using them to have a family?

Eggs and sperm in storage

UK law dictates how long eggs, sperm or embryos can be stored. The basic storage period is ten years, but for trans patients storing gametes because the medical treatment they are having will make them 'prematurely infertile', the basic period can be extended every ten years, up to a maximum of 55 years. That means there is no time pressure to start a family, although renewals of storage do have to be kept up to date.

Under UK law no one owns gametes (or embryos created with them) while they are in storage; instead they are governed by the rules on consent. The person who has given the genetic material (or each of them, in the case of embryos) has to give written signed consent to the storage and use. Consent can be varied at any time, which means that the intended parent has ongoing control over his or her own gametes (together with the other genetic provider if the gametes are fertilised and stored as embryos).

Becoming a parent

In the UK someone can legally change gender by obtaining a gender recognition certificate once they have been living in their acquired gender for at least two years and with medical evidence of gender dysphoria. The change is retrospective and the trans person will be issued with a new birth certificate in their acquired gender.

The law makes it clear that, if a person changes legal gender, they do not lose their status as the 'mother' or 'father' of an existing child. That means that a trans woman remains her children's legal father, and a trans man remains his children's legal mother.

The law does not say specifically what the position is for trans parents who conceive after having transitioned. It is arguable that the same rule applies, enabling trans parents to at least claim the parenthood status they would have had under

their previous gender. In other words, if a trans man gives birth, he is still the child's legal 'mother'; a trans woman who is the biological father of a child carried by her female partner is still the legal 'father'. The legal labels may not be ideal in terms of parental identity, but there is at least a recognition of legal parenthood.

However, that is very often not the end of the story. Most trans intended parents need the help of a donor and/or a surrogate to have a family after transitioning, and the law on donation/surrogacy then dictates parenthood. In some cases that can in fact be helpful, enabling a trans parent to have a more appropriate (or at least a gender neutral) parental title in law. Here are two examples:

Example 1: Alice and John

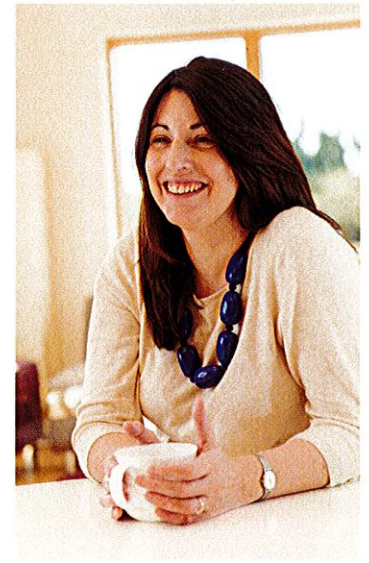
John is a FTM trans man who stored his eggs before transitioning. He is married to Alice. They have a child using his stored eggs and donor sperm, and Alice carries the pregnancy.

The law says that Alice, as the birth mother, is the legal mother; and John, as her husband, is the legal father. Irrespective of biology, this means that Alice and John can be registered on their child's birth certificate as mother and father.

Example 2: Stefi and Rich (and Kirsten and Bill)

Stefi is a MTF trans woman who stored her sperm before transitioning. Rich is her (male) partner. An agency in the US introduces them to Kirsten (married to Bill), who agrees to act as their gestational surrogate. They create embryos with eggs from a US donor and sperm from each of them, and two embryos are transferred to Kirsten, who becomes pregnant with twins. Stefi and Rich are each the biological father of one of the children.

In the US the gestational surrogacy contract is legally recognised, which means that the law upholds what everyone intended as to their legal status at birth. Stefi and Rich are therefore named as the 'mother' and 'father' on the children's US birth certificates. UK law, however, treats Kirsten and Bill as the legal parents of the children (as the woman who gave birth and her husband). Like other parents through surrogacy, Stefi and Rich apply to the UK family court for a parental order. This leads to the issue of UK birth certificates for their children which record them both gender-neutrally as the children's legal 'parents'.



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