

Two mums and a baby

same sex parents and the new rules on birth certificates

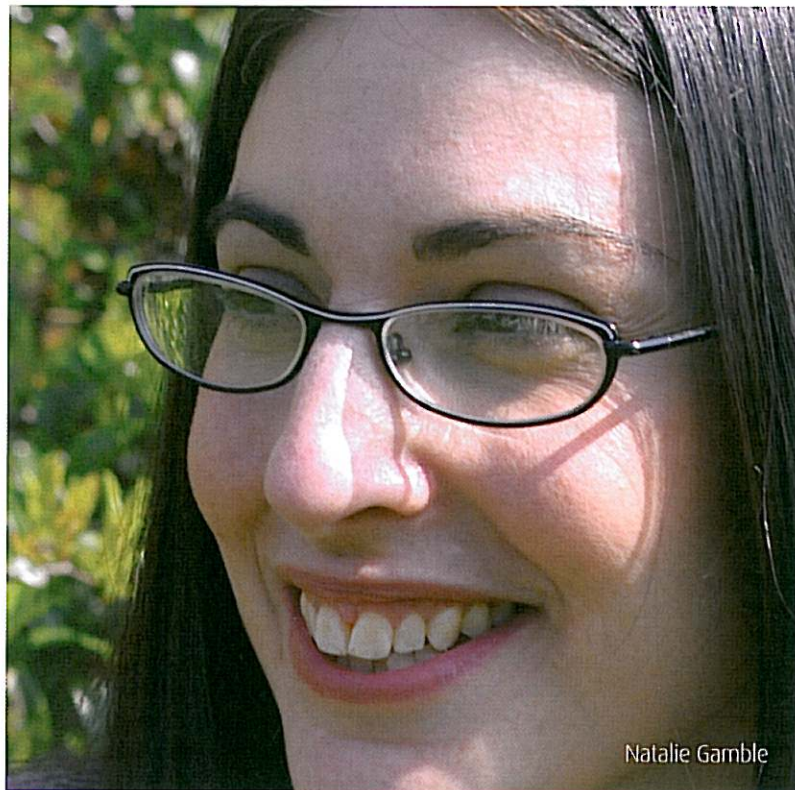
This article will go to print around the time it will become possible to register a birth in the UK naming two women as a child's parents. The law was changed as from 6 April 2009 to allow both partners in a lesbian relationship to be treated as the legal parents of a child conceived with donor sperm. The new rules are not retrospective and only apply to children conceived on or after 6 April this year which means that, allowing for some premature arrivals, the first such children are likely to be born in the autumn of this year.

This is not, of course, the first time that the law has recognised non-biological parents as legal parents in assisted reproduction situations. For many years, married and unmarried heterosexual couples conceiving with donor sperm have both been treated as the legal parents of their child, and the (non-biological) father has been legally entitled to be recorded on the birth certificate. In many ways, therefore, the change is just about equalisation: it puts same sex partners in the same position as opposite sex partners where a child is conceived with donor sperm.

But somehow the change feels much more significant, a coming of age for same sex families. It completes what must be one of the most complete legal revolutions in our history. You only have to look back to 2004 for a time when lesbian couples were legally invisible, unable to marry or acquire any official recognition of their relationship, unable to adopt children jointly and barred from accessing fertility treatment at many licensed clinics. Since then, various pieces of law have introduced legal equality for same sex couples. Notably, adoption law has been updated to allow applications from same sex couples and civil partnership has enabled couples to obtain legal recognition (similar to marriage) of their commitment and responsibilities towards each other.

Conception law has been a little slower to catch up. Although evolving HFEA policy has gradually enabled clinics to open their doors to lesbian couples where once this was strongly discouraged, clinics have (until 1 October 2009) been obliged to consider a child's 'need for a father' before offering treatment. The infamous 'need for a father' provision, the subject of a free vote in Parliament while the Human Fertilisation and Embryology Act 2008 was going through the House of Commons last year, was introduced nineteen years ago in an attempt to discourage the provision of fertility treatment to single and lesbian women. The provision is no longer appropriate given our modern human rights and equality laws, and is now being replaced with a more neutrally worded obligation to consider a child's need for 'supportive parenting'.

Even more important in practice are the new parenthood rules for same sex families. These allow lesbian couples (including those who conceive through licensed clinics, and those who conceive through artificial insemination at home if they are civil partners) to be treated as joint legal parents from conception. Both partners can be named on the birth cert-



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ificate and they will then share full and equal legal responsibility for their child.

This provides important recognition for non-birth mothers in lesbian relationships who previously had no automatic status (or responsibility) for the child they helped to conceive. Such status could be acquired if the couple were prepared to jump through certain legal hoops and, in practice, the solution was for the couple to apply to the family courts to adopt their own child. However, for those who chose not to undergo this lengthy and intrusive process, the family could be left extremely vulnerable in the event of death or relationship breakdown. For most children conceived after 6 April 2009 to lesbian couples, adoption will no longer be necessary, and children will from conception, automatically have two legal parents responsible for their care. This protects not only the couple, but also children who otherwise – in many donor conception situations – have only one legal parent. Being named on the birth certificate is therefore of practical as well as symbolic significance.

And what about the men? Will we also see two fathers named on birth certificates?

Male gay couples are also being catered for by the UK's new fertility laws, but they will have to wait a little longer to get the benefit of the changes. From 6 April 2010 male couples conceiving through surrogacy will be able to apply for a parental order to acquire status as the legal parents of their child. Ultimately, this will mean that gay men can secure full joint parenthood status without needing to adopt (assuming that they comply with all the criteria of the law on parental orders). Although their rights will, in common with other couples undergoing surrogacy, not be obtained automatically on birth, male gay couples will also in due course be issued with birth certificates naming them as a child's parents.

The changes are very welcome and acknowledge the modern reality of diverse family creation, ensuring that couples who conceive a child jointly, whether heterosexual or homosexual, are both equally recognised as being responsible for their child.

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