

The brave new world of fertility law

Natalie has kindly agreed to write an article in each edition of our magazine



Natalie Gamble

The law which regulates assisted conception is having its first major facelift in eighteen years. Parliament is currently debating the proposed new law, and this has provoked a saga of headline-grabbing controversies in recent months – from lesbian IVF rights, to donor symbols on birth certificates, to animal-human hybrid embryo research. You would be forgiven for feeling confused about what the Human Fertilisation and Embryology Bill 2008 actually means for fertility patients. Fertility law expert Natalie Gamble explains.

The new law essentially maintains the existing system of legal regulation by the Human Fertilisation and Embryology Authority. It will, however, make some significant changes for fertility patients, largely reflecting changes in social attitudes since the late 1980s.

New rights for same sex and unmarried couples

The surrogacy rules will be widened. Currently only married couples can apply for a parental order (the legal mechanism for reassigning parenthood from the surrogate to the intended parents after the birth), but the law will be extended to allow applications from unmarried and gay couples.

The new law will also allow lesbian couples conceiving by donor insemination to both be named on the birth certificate. They will get essentially the same treatment as heterosexual couples who conceive using donor sperm, and this will remove the current need for couples to adopt to secure rights for the non-birth mother.

Changes to the welfare of the child assessment

The obligation of clinics to consider the 'need for a father' before offering treatment will be replaced with the more neutrally worded 'need for supportive parenting', making it clear that single and lesbian women should not be excluded.

Donor information rights

Continuing the trend of increasing rights to information about donor conception, there are several largely unpublicised but significant changes:

- Donor-conceived children will, once they reach the age of

18, have a new right to be put in touch with any donor-conceived half siblings.

- The age at which donor conceived children can get non-identifying information about their donor will be reduced from 18 to 16.
- Donors will have the right to find out limited non-identifying information about their genetic offspring.

There has also been discussion about whether donor conception should be noted on children's birth certificates, the logic being that the right to know is meaningless if the majority of children are never told they are donor conceived. The Bill does not include this as it stands – the government currently opposes it – but it is an issue which is likely to be discussed again before the Bill becomes law.

Embryo storage

The maximum period for embryo storage is being extended from five to ten years. Prompted by the story of Natalie Evans, there will also be a new twelve month 'cooling off' period to give a partner who withdraws consent to embryo storage the opportunity to change his/her mind before embryos are irrecoverably destroyed.

So where are we now?

The Bill has been passed by the House of Lords and is about to face the House of Commons. It's not much more than a guess, but its provisions might be in force as early as 2009 if all goes well. However, the proposed changes are by no means yet set in stone. David Cameron has given his MPs a free vote on the Bill, and it looks as though Gordon Brown may follow suit. This all suggests there will be more controversy as the Bill progresses through the House of Commons.

It is fascinating to watch the debate on these important issues. Bioethics is something which always attracts passion from a wide constituency (not to mention media interest). But for those of us who have been or who are at the coal face of assisted conception, the issues being debated are reality. These are interesting times, and what happens over the next few months will shape the experience of families created by assisted conception for many years to come.

Natalie Gamble is a solicitor with law firm Lester Aldridge LLP and is a leading expert on UK fertility law. Herself a mum of two children born following assisted conception, she now advises clients from all over the UK on donor conception, surrogacy and other fertility treatment issues, and is often quoted in the national press and on BBC radio. She runs the pioneering legal advice service at the London Women's Clinic and hosts various online forums, including the new Legal Issues forum on our very own I N UK website.