

A GUIDE TO LESBIAN PARENTING



Deciding to co-parent a child or children with your lesbian partner can be exciting but complicated. You may decide to foster or adopt a child, conceive by artificial or donor insemination, or you or your partner may already have a child from a previous relationship. This legal guide has been prepared to give general information about the law relating to your status as a child's biological mother, non-biological co-parent or civil partner and raises some of the issues that you will need to consider when making decisions about your family. It also looks at the legal status of your child's biological father.

The law

The law relating to lesbian parenting is set out in the **Human Fertilisation and Embryology Act 2008**, the **Children Act 1989 (CA)** and the **Adoption and Children Act 2002 (ACA)**. These Acts set out a framework of orders relating to children and the legal status of those who are or may wish to become involved in their lives. The applications you may need to make will depend on your relationship with your child.

Biological mother

As your child's mother you automatically have **parental responsibility (PR)** for your child. This means that you have the legal status to make all the decisions necessary in your child's upbringing, particularly decisions about health, education, religion and leaving the country. The only way you can lose PR is if your child is

adopted (unless the adoption of your child is by you and your partner under the ACA 02); otherwise you will continue to have full legal status throughout your child's upbringing.

Civil partners

If you have entered into a civil partnership and your partner conceived a child after 6 April 2009 through artificial insemination at a licensed fertility clinic or **at home** you and **your civil partner will be considered to be the child's legal parents**. This is the case whether the donor is known or unknown to you and your partner. This means you will both have PR and will be considered to have an equal role in bringing up your child. The child will have no legal father. You should ensure that both of your names are registered on the child's birth certificate.

If your partner conceives a child through sexual intercourse with a man during your civil partnership, you will not automatically have any rights to the child and you will have similar rights to married step parents (see below).

If you were in a civil partnership and your partner conceived a child before 6 April 2009

You will not automatically have any rights to the child and you will have similar rights to married step parents (see below).

Non civil partners whose partner conceived after 6 April 2009

If your partner conceived at home you will not have any legal status in relation to your partner's biological children unless you take legal steps to formalise your position. You can apply for a **shared residence order** (sometimes called a joint residence order) under the CA 89 or an **adoption order** under the ACA 02. See below for further information about these options.

If your partner conceived at a licensed fertility clinic and you want to be the second parent of the child, this is possible as long as both you and your partner give your consent in writing. At the fertility clinic you should complete a consent form which should be provided for you at the clinic.

If you complete this consent form you will have equal rights to your partner's child and you can be named on the birth certificate, unless either you or your partner withdraws consent anytime before the sperm, egg or embryo transfer.

If your partner conceived at a licensed fertility clinic and you do not want to be the child's second parent, you should sign a form

indicating that you do not want to be the second parent of the child. You will not have any legal rights to your partner's child unless you take legal steps to formalise your position.

If your partner conceived before you entered a civil partnership

If your partner conceived a child after 6 April 2009, and you fulfil the criteria detailed above for non-civil partners you will be treated as the child's legal parent. If you are not named on the birth certificate you can have the birth re-registered to include your name after you have entered the civil partnership.

If you have not complied with the consent requirements as detailed above, you will be treated in the same way as a married step-parent and will be able to obtain PR for your civil partner's child.

If you do not have PR for your partner's child and you are in a civil partnership

You can obtain PR by either entering into a **Parental Responsibility Agreement (PRA)** or applying to the Court for a **Parental Responsibility Order (PRO)**. If the father of the child has PR, he will need to be involved in signing the PRA or be notified of your application for a PRO. For more information about PR see our **Guide to Parental Responsibility**.

Entering into a PRA is very straightforward. You, your partner and the child's father (if he has PR) will need to sign a PRA form. You will be able to get this form from your local County or Magistrates Court. The form will need to be signed in the presence of a court official and then sent to the Principal Registry of the Family Division in London.

If you do not have the consent of everyone with PR you can apply for a PRO to your local Family Proceedings Court or County Court. Again, if the child's father has PR, he will need to be notified of and involved in the Court proceedings.

Non civil partners whose partner conceived before 6 April 2009

If you have not entered into a civil partnership you will not have any legal status in relation to your partner's biological children unless you take legal steps to formalise your position. You can apply for a **shared residence order** (sometimes called a joint residence order) under the CA 89 or an **adoption order** under the ACA 02. See below for further information about these options.

Shared residence orders

Applying for a shared residence order involves an application to either your local Family Proceedings Court or County Court. A shared residence order will give you PR for your partner's child, giving you the ability to make and be involved in all the important decisions in the child's life. You will be able to consent to medical treatment, make decisions about how and where she or he should be educated and what religion she or he should follow as well as all the day-to-day decisions you will have to make during the child's upbringing.

If you have been living with your partner's child for a period of 3 years in the last 5 years you will automatically be able to make an application for a residence order. If not, you will need the permission of everyone who already has PR for the child – her mother and perhaps her father. If you do not have permission from everyone who has PR you will have to get the permission of the court in an **application for**

leave. To obtain the court's permission you will have to satisfy the court that you have a connection with the child and that the proposed application would not disrupt the child's life. For further information about residence orders see our **Guide to Residence Orders**.

Adoption

Civil partners can adopt a child together as a couple. This means that you will be able to adopt a child who has no biological connection with either of you or a biological child of one of you. Adoption involves a fairly lengthy and complex procedure involving an assessment by Social Services and court proceedings.

If the child you are adopting has a known biological father who has PR he will need to be part of any court proceedings and if he does not agree to the adoption the court will have to decide whether adoption is in the child's best interests. When the court looks at whether adoption is in the child's best interests one of the factors that it has to take into account is the fact that if adopted by you the father would lose PR and all legal status in the child's life. The court may not agree to an adoption where, for example, the father has played an active role in the child's life and the court believes it is in the child's best interests for this to continue.

Once you have adopted a child you will gain PR and become the child's legal parent. Adoption is therefore a much more permanent option than a shared residence order. Seek further legal advice about adoption by calling our legal advice line or consult a solicitor.

Fostering a child

Another way in which lesbian couples can become involved in parenting a child is to

become a foster parent. For more information about fostering contact your Local Authority.

Fathers from previous relationships

A father to whom you or your partner are or were married will automatically have PR for any child of that marriage. If you were not married then whether or not he will have PR will depend on your child's date of birth, whether he is on the birth certificate or whether he obtained PR through a PRA or PRO (see above and our **Guide to Parental Responsibility**). If the father does have PR he has the right to be involved in all the important decisions you make during your child's upbringing. He has the right to apply to the court for orders in relation to your child including contact and residence orders. He will need to be involved in any court proceedings about your child such as your application for a shared residence order or adoption with your partner.

He will have a legal financial responsibility to his child and therefore the CSA can carry out an assessment and collect maintenance payments from him.

Known donors

If you are **in a civil partnership** and you or your partner conceive a child during your civil partnership, outside of a licensed fertility clinic using a known donor, the donor will **not** have any legal rights to the child and both you and your partner will have PR.

If you are **not in a civil partnership** and you conceive a child outside of a fertility clinic in the UK with a known donor, for example at home, the donor will be the legal father of your child and will automatically have certain legal rights

and your partner will have no legal rights to the child (see above). You will need to discuss what involvement he will have in your child's life but it is important to remember that any agreements you reach are not legally binding. For example, you may reach an agreement with him about how often he should see your child but this would not prevent him from applying to the court for more contact or for shared residence.

One important decision you will have to make is whether his name should be registered on the birth certificate. If your child was born on or after 1st December 2003 or registration took place after this date and the father's name was registered on the birth certificate, he will automatically have PR for your child and the right to an involvement in all the important decisions you make in your child's upbringing. If he is not registered on the birth certificate, he will not automatically have PR but he could obtain it by entering into a PRA with you or applying to the court for a PRO.

Whether or not he has PR or is named on the birth certificate, he will also have a legal financial responsibility for his child. As you will not be living together you can apply to the Child Support Agency for child maintenance for more information see our **Guide to Child Maintenance**.

Assisted conception and anonymous donors

Fertility treatment in the UK is regulated by the Human Fertilisation and Embryology Authority (HFEA). An anonymous donor will not have any legal status in relation to your child and will therefore have no involvement in their life. Children born by anonymous donor assisted conception after April 2005, however, will have

the right to receive information about their donor when they reach 18 years old.

What if we separate?

The courts have recognised that non-biological lesbian co-parents have an important ongoing role in their child's life following relationship breakdown. What rights a non-biological co-parent will have will depend on what your legal relationship was to your partner and child.

If you share PR for your child with your partner both the birth mother and the non-birth mother can apply for contact and residence orders.

If you entered into a civil partnership prior to your partner conceiving a child, or the child was conceived while you were in a civil partnership but before 6 April 2009, you can automatically apply to the court for orders in relation to your civil partner's biological child such as contact and residence orders.

If you have a shared residence order it will last until the child's 16th or 18th birthday or until the court makes a further order in relation to the child. Therefore if you separate from your partner, one of you could apply to the court to discharge the shared residence order.

Discharging the shared residence order would mean the non-biological co-parent would lose her PR (unless she had entered into a PRA or obtained a PRO). She may, however, be able to remain involved in the child's life by applying for a contact order.

If you adopted a child together you will both remain that child's legal parents despite your separation and either of you will be able to apply to the court for orders concerning her or him without first having to obtain the court's permission. Neither of you will lose PR for the child. For further information on all of these

issues see our **Guide to Parental Responsibility**, our **Guide to Child Contact** and our **Guide to Residence**.

Child support

You will only be able to claim maintenance for your child from your ex partner through the **Child Support Agency (CSA)** in the following situations:

- You partner is the legal parent as you conceived the child while in a civil partnership after 6th April 2009;
- You were not in a civil partnership at the time of conception, but you conceived your child at a registered clinic and your partner completed a consent form, after 6th April 2009; or
- You and your partner adopted a child together or your partner adopted your child.

For more information see our **Guide to Child Support**. If you entered into a civil partnership there may be other financial claims you can make, see our **Guide to Financial Arrangements After Civil Partnership Breakdown**.

Homophobia

If you experience homophobic attitudes from your legal representatives or the courts, challenge them and make a complaint to the appropriate body such as the Solicitors Regulation Authority, the Bar Standards Board, the Court Service or Office for Judicial Complaints.

The law relating to these issues can be complex. We have provided only a very basic overview of the terminology, law and procedure. We would strongly recommend that you seek legal advice by either telephoning our legal advice line or contacting a solicitor.

For free, confidential, legal advice on family law issues including divorce and relationship breakdown, children, domestic violence and lesbian parenting call our Family Law Advice Line on 020 7251 6577 (telephone) or 020 7490 2562 (textphone) on Mondays 11am–1pm, Tuesdays and Wednesdays 2–4pm and 7–9pm, Thursdays 7–9pm and Fridays 12noon–2pm.

For free, confidential, legal advice on criminal law issues including domestic and sexual violence call our Criminal Law Advice Line on 020 7251 8887 (telephone) or 020 7490 2562 (textphone) on Tuesdays 11am–1pm and Thursdays 2–4pm.

For free, confidential, legal advice on immigration and asylum law, including in relation to financial support issues call our Immigration and Asylum Law Advice Line on 020 7490 7689 (telephone) or 020 7490 2562 (textphone) on Mondays 2–4pm and Wednesdays 11am–1pm.

Other useful contacts

Child Maintenance Options	08457 133 133	www.cmoptions.org
Community Legal Advice (for finding a solicitor)	0845 345 4345	http://legaladviserfinder.justice.gov.uk/ AdviserSearch.do
Donor Conception Network	020 7278 2608	www.donor-conception-network.org
Human Fertilisation and Embryology Authority	020 7291 8200	www.hfea.gov.uk
Stonewall	08000 50 20 20	www.stonewall.org.uk
The London Women's Clinic	020 7487 5050	www.londonwomensclinic.com
London Lesbian and Gay Switchboard	0300 330 0630	www.llgs.org.uk
Parentline	0808 8002222	www.parentlineplus.org.uk
PinkParents	08701 273 274	www.pinkparents.org.uk
Women's Health Concern	01628 478 473	www.womens-health-concern.org

Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT

Office/Admin: 020 7251 6575 Textphone: 020 7490 2562

Fax: 020 7490 5377 Email: info@row.org.uk

Website: www.rightsofwomen.org.uk

Industrial and Provident Society No: 23221R



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Please note that the law as set out in this legal guide is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general information only.

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