

## Rights of Women

### Response to the Review of the Human Fertilisation and Embryology Act

Rights of Women is an Industrial and Provident society, which was founded in 1975 to promote the interests of women in relation to the law. We run a free, national confidential telephone legal advice help line for women. We specialise in advising in family law, especially domestic violence and Children Act matters. Rights of Women works to attain justice and equality by informing, education and empowering women on their legal rights. We are a membership organisation and our activities include producing publications, organising conferences and training courses and undertaking policy and research work.

We are writing in response to the government's review of the Human Fertilisation and Embryology Act. Whilst much of the review focuses on regulatory and technical advancement issues, we welcome the opportunity to provide input in those areas which affect the interests of women, namely, the amendment of section 13(5) of the HFE Act, sex selection and the applicability of the Act to civil partners, married and unmarried partners.

Notwithstanding the technical nature of the review, it is important that every element of the review and any resulting changes to the law or regulation of reproductive technology be equality proofed, i.e. be tested to ensure it does not discriminate on the basis of gender, race, disability, sexuality, age, religion or traveller status.

#### Section 13(5) HEF Act (question 17)

Current section 13(5) provides 'A woman shall not be provided with treatment services unless account has been taken of the welfare of any child who may be born as a result of the treatment (including the need of that child for a father), and of any other child who may be affected by the birth.' Under section 25 of the Act, the Human Fertilisation and Embryology Authority (HFEA) is required to provide guidance on the implementation of section 13(5) within its Code of Practice. In this regard we note that the most recent addition of the Code (Sixth Edition, 2004, as amended) states 'Where the child will have no legal father the treatment centre is expected to assess the prospective mother's ability to meet the child's/children's needs and the ability of other persons within the family or social circle willing to share responsibility for those needs' (paragraph 3.14). We further note the HFEA consultation (*Tomorrow's Children*, January 2005) examining the Authority's guidance to clinics on how to interpret the welfare of the child principle established by section 13(5) of the Act, and the subsequent conclusions of the Authority that 'whilst the involvement of a medical team in conception brings some responsibility towards the child who may be born as a result of their assistance, this responsibility should not outweigh the important responsibility that clinicians have towards respecting patient choice...[and] that there should be a presumption towards providing treatment to those who request it, but that treatment should be refused in cases where clinics conclude that the child to be born, or any existing child of the family, is likely to suffer serious harm.' Given the potential of section 13(5) of the Act to discriminate against women – both lesbian (single and couples) and heterosexual -- Rights of Women welcomes the government's re-visiting of the welfare of the child principle contained within the Act as set out in question 17. Question 17 asks 'Do you think that the requirement to take account of "the need of the child for a father", as part of considering the welfare of the child, should be removed from the Act? Alternatively, do you think that it should be replaced with "the need of the child for a father and a mother"?'

In relation to the first part of question 17, Rights of Women supports the removal of the reference to 'the need of the child for a father' as suggested by the House of Commons Science and Technology Committee. The reference is discriminatory in nature, and notwithstanding the HEFA guidance, is likely to result in the discriminatory treatment of lesbian couples and single women seeking reproductive treatment or assistance. Indeed, the amount of discretion provided by the formulation in the Code of Practice (as amended) is more than likely to result in instances where refusal to provide reproductive treatment or assistance in absence of a father is determined on the basis of subjective and irrelevant or inappropriate factors. This is particularly likely in the case of lesbian women, either jointly in a relationship or as single women, seeking reproductive treatment or assistance, given the historic and continued discrimination this group of women suffer. In addition, heterosexual women seeking reproductive treatment or assistance without a male partner may also be refused services on the basis of subjective and stereotypical factors.

#### Sex selection (question 37)

The issue of sex selection has important implications in the promotion of the interests of women. However we note the government's lack of recognition of the potential gendered use of sex selection, particularly in relation to the issue of "son preference" in certain cultures or communities. Whilst Rights of Women recognises that the issue of sex selection and association with particular communities should be approached with sensitivity, it is an issue which warrants at the very least recognition by the government's review. Sex selection and son preference is all the more relevant when placed against the backdrop of advances in reproductive technology, such as those which have precipitated the Review of the Act. Indeed, the government has obligations and commitments under international human rights standards to protect the rights of the girl-child, including from discrimination, which the Beijing Platform for Action notes is often a result of son-preference (paragraph 93). One of the actions to be taken by governments under the Platform for Action is the elimination of 'all forms of discrimination against the girl child and the root causes of son preference, which result in harmful and unethical practices such as prenatal sex selection and female infanticide; this is often compounded by the increasing use of technologies to determine foetal sex, resulting in abortion of female foetuses' (paragraph 277c). Therefore, in response to question 37 of the Review, Rights of Women favours the prohibition of sex selection for non-medical purposes. We would further encourage the government to expand the scope of the Act to include regulation of "sperm sorting" techniques when it is undertaken using the "fresh" sperm of a man for the insemination of his wife/partner, where the sperm has not been stored and is not used in IVF. This would ensure that those sex selection techniques which are currently available would fall within the ambit of the Act and remedy the current lacuna in the law under which some techniques are regulated only in specific circumstances and not in others. We note with interest the HFEA's 2002/03 public consultation on the issue of sex selection, which found strong public opposition to sex selection for non-medical reasons (Sex Selection: Options for Regulation, 2003).

#### Civil partnerships, married and unmarried couples (questions 41 and 56)

Rights of Women welcomes the proposed extension of current provisions of the Act regarding the ability of a person who believes they were conceived as a result of gamete or embryo donation to access the HFEA register to discover whether that person is related to someone that he or she intends to enter into a civil partnership (question 41). We support this extension, which treats prospective civil partners on a par with current provisions relating to prospective marriage

partners. We further fully support the government's 'policy to provide same-sex couples who form a civil partnership with parity of treatment in a wide range of legal matters with opposite-sex couples who enter into a marriage' (paragraph 8.21). Rights of Women therefore encourages the government to formalise the ability of the courts to make a parental order in favour of civil partners following surrogacy and where one of the civil partners carries a child (as the result of reproductive assistance or treatment) the other civil partner should be treated in law as the parent of the child. Such a position logically follows the government's commitment to treating civil partnerships equally with marriage.

However, Rights of Women notes that the reference to civil partners only will result in the exclusion of those gay women who do not enter into a civil partnership. In this regard, we also note the current discriminatory treatment between married and unmarried couples and the impact this has on lesbian couples. Thus in relation to question 56 Rights of Women supports the extension of the provisions of the HFE Act dealing with status and legal parenthood to unmarried same-sex couples. Further, with regard to the government's position that there is no legal definition of an unmarried couple we would like to highlight the amendments to the Family Law Act 1996 as provided by the Domestic Violence, Crime and Victims Act 2004, which extends the application of the 1996 Act to cohabiting unmarried couples. The amendment defines cohabitants as 'two persons who, although not married to each other, are living together as husband and wife or (if of the same sex) in an equivalent relationship' (new section 62(1)(a) 1996 Act). The definitional difficulties involved in extending status and legal parenthood to same-sex couples who do not form civil partnerships, could therefore be resolved by reference to the amendments of Part IV of the Family Law Act 1996 (as well as facilitating a consistent approach in the law), and goes some way to addressing the discriminatory treatment of lesbian couples seeking reproductive treatment or assistance.

We hope that are comments are useful and serious consideration is given to our concerns.