

# Children and the law: a guide to lesbian parenting



Deciding to co-parent a child or children with your lesbian partner or wife can be exciting but complicated. You may decide to foster or adopt a child, conceive by artificial or donor insemination, co-parent with a third party, or you and your partner may already have children from previous relationships. This legal guide gives information about your legal status as a child's birth mother, non-birth mother or step parent. It also looks at the legal status of your child's biological father. Rights of Women publishes a number of other legal guides that may be useful including [Children and the law: the Family Court process](#) and [Children and the law: parental responsibility](#). You can access our full range of legal guides at [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)

**What does it mean to be a legal parent?**

A child can only have two legal parents. Being a child's legal parent means:

- You have financial responsibility for the child which includes paying child maintenance if the child does not live with you
- You will be considered parent and child for the purposes of British nationality, inheritance and pension rights

### **Who are the legal parents?**

The birth mother will automatically be one of the child's legal parents. We refer to the birth mother rather than the biological mother because in England and Wales, the law says that whoever gives birth to the child is the legal mother (even if she used donated eggs).

The identity of the other parent depends on how the child was conceived and in what circumstances.

If the child was conceived through sperm donation at a UK registered clinic, the second legal parent will be chosen on the paperwork at the clinic at the time of the sperm donation.

If the child was conceived through sexual intercourse or through artificial insemination (but not at a UK registered clinic)

the other  
legal parent will be the biological father. However, if the  
birth mother  
is married or in a civil partnership at the time of  
conception, and the  
child was conceived through artificial insemination, the  
husband, wife  
or civil partner will be the child's other legal parent, even  
if they  
are not the biological parent.

The only way that you can change a child's legal parents is by  
adopting the child, or if there has been a surrogacy  
arrangement,  
through a parental order. If a child is adopted then the  
adoptive  
parents will become the legal parents and the birth/biological  
parents  
will no longer be legal parents or have parental  
responsibility. For  
more information about surrogacy, seek specialist advice.

### **What is parental responsibility (PR)?**

The law says that PR is:

*all the rights, duties, powers, responsibilities and  
authorities  
which by law a parent of a child has in relation to the child  
and the  
child's property*

People with PR can make or be involved in the important decisions necessary in a child's life including issues relating to where a child should live, their education and health, their name, religion and whether they can travel or live abroad.

Any number of people can have PR for a child. This means that it is possible for more than two people to share parental responsibility for a child.

## **Birth mother**

As your child's birth mother you are automatically your child's legal parent and you have PR. The only way you can lose PR and legal parentage is if your child is adopted (unless your child is adopted by you and your partner).

## **If you are the civil partner or wife of the birth mother**

Child conceived after 6 April 2009

If your civil partner or wife conceived a child after 6 April 2009 through artificial insemination (at a clinic or at home), you and your

civil partner/ wife will be the child's legal parents and will both have parental responsibility. This is true whether the sperm donor is known or unknown. You should ensure both of your names are registered on the child's birth certificate, for the sake of clarity.

If your wife or civil partner conceived a child after 6 April 2009 through sexual intercourse with a man, you will not automatically have any rights to the child.

Child conceived before 6 April 2009

If your wife or civil partner conceived a child before 6 April 2009 you will not automatically have any rights to the child.

### **How to obtain PR for your wife or civil partner's child**

If you are married or in a civil partnership with the birth mother, you can obtain PR by either entering into a parental responsibility agreement (PR Agreement) or applying to the court of a parental responsibility order (PR Order). For more information about PR see **Children and the law: parental responsibility**.

PR Agreements:

Entering into a PR Agreement is straightforward. If the father of the child or anyone else has PR, he will need to be involved in signing the PR Agreement or be notified of your application for a PR Order. You, your partner and the child's father (if he has PR) will need to complete a form C(PRA2) which you can download from the HMCTS website. The form will need to be signed in the presence of a court official at your local county court or family court and you will need to bring along the child's birth certificate and your photo ID. You then send two copies of the form to the Central Family Court, First Avenue House, 42-49 High Holborn, London, WC1V 6NP.

#### PR Orders:

If the father or someone else who has PR does not consent to the PR Agreement, you can apply to the Family Court for a PR order. You make this application on a Form C1, which you can download from the HMCTS website. If the child's father has PR, he will need to be notified and involved in the court proceedings.

**If you are not married/ in a civil partnership with the birth mother**

Child conceived outside of a licenced fertility clinic:

If your partner conceived a child at home (not at a licenced fertility clinic), and you are not married or in a civil partnership,  
you will not automatically have any rights to the child.

Child conceived at a licenced fertility clinic:

If your partner conceives a child at a licenced fertility clinic, you  
can both give your written consent to the clinic for you to be the  
child's second legal parent. The child will have no legal father and you  
and the birth mother will have equal parental rights and responsibilities and you can be named on the birth certificate. Either  
you or your partner can withdraw consent any time before the sperm, egg  
or embryo transfer.

If your partner conceives at a licenced 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.

**How to obtain PR if you are not married to or in a civil partnership with the birth mother**

If you have not married or entered a civil partnership with the birth mother, and you do not already have PR for the child then you can obtain it by applying to the family court for a child arrangements order stating that the child lives with you or with you and your partner. If the order says the child 'lives with' you then you automatically have PR for the child. Another option would be to adopt the child which would make you one of the child's legal parents. See Adoption for further information.

## **Child arrangements order**

A child arrangements order is an order which states who the child lives with and when, and who the child spends time with and when. Child arrangements orders have replaced what were previously known as residence orders and contact orders. Applying for a child arrangements order involves an application to your local Family Court. A child arrangements order stating that the child lives with you or with you and your partner will give you PR for your partner's child.

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 child arrangement s 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 see the guide on [Children and the law: when parents separate](#).

## **Adoption**

Civil partners and married couples 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. 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 more permanent option than a  
child arrangements order. Seek legal advice if you are considering  
adopting a child.

## **Fostering a child**

Another way in which you and your partner can become involved in  
parenting a child is to become foster parents. 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 other ways (see [Children and the law: 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 child arrangements orders. He will need to be involved in any court proceedings about your child.

He will also have a legal financial responsibility to his child. See this guide on [Children and the law: child maintenance](#).

## **Known donors**

If you are married or are in a civil partnership and you or your partner/wife conceive a child 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 civil partner/wife will have PR.

If you are not in a civil partnership/married 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. You will need to discuss what  
involvement  
he will have in your child's life. If you cannot reach an  
agreement or  
if the agreement breaks down you or the donor can apply to the  
court for  
a child arrangements order.

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 PR Agreement  
with you  
or applying to the court for a PR Order. 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 Maintenance Service for child maintenance,  
for more  
information see [Children and the law: child maintenance](#).

## **Assisted conception and anonymous donors**

If you use an anonymous donor at a fertility clinic, the anonymous donor will not have any legal status in relation to your child and will have no involvement in their life. However, children born by anonymous after April 2005, will have the right to receive information about their donor when they are 18 years old.

## **Co-parenting agreements**

If you decide to co-parent with friends, it can be helpful to enter a co-parenting agreement which deals with important questions as to how you will raise your child. The agreement may deal with questions such as how much time your child will spend with each of you, what religious education your child will receive, what will happen if you or the other parents separate or form new relationships and who will contribute financially to your child's upbringing. Whilst a co-parenting agreement can be a useful roadmap to navigate future parenting disagreements, it is important to be aware that these agreements are not legally binding documents and you cannot rely on them in court.

## **What if we separate?**

The courts have recognised that non-birth lesbian co-parents have an important ongoing role in their child's life following relationship breakdown. Your rights will depend on your legal relationship to your partner and child. If you and your partner share PR for your child you can both apply for child arrangements orders to determine who the child lives with and how much contact the child should have with the other parent or if there should be shared care.

If you already have a child arrangements order (or residence order), the part of the order which states who the child lives with will last until the child is 18 years old. If you and your partner separate either one of you can apply to change or discharge the order. To discharge an order means to cancel it. Discharging the order would mean the non-birth mother would lose her PR unless there is a PR Agreement or PR Order in place.

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 this legal guides [Children and the law: parental responsibility](#) and [Children and the law: when parents separate](#).

The law is complex and may have changed since this guide was produced. This guide is designed to provide general information only for the law in England and Wales. You should seek up-to-date, independent legal advice.

Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this guide.

## Useful contacts

Finding a solicitor

The Law Society – 0207 320 5650 –  
[www.lawsociety.org.uk/find-a-solicitor/](http://www.lawsociety.org.uk/find-a-solicitor/)

Ministry of Justice – 020 3334 3555 –  
[www.find-legal-advice.justice.gov.uk/](http://www.find-legal-advice.justice.gov.uk/)

Resolution – 01689 820272 – [www.resolution.org.uk/](http://www.resolution.org.uk/)

Emergency contacts

Police (emergency) – 999

24 hour domestic violence helpline – 0808 200 0247 –  
[www.nationaldomesticviolencehelpline.org.uk](http://www.nationaldomesticviolencehelpline.org.uk)

National LGBT Domestic Abuse Helpline – 0800 999 5428 –  
[www.galop.org.uk](http://www.galop.org.uk)