

# Annex II

## Shared motherhood and legal parenthood FAQ

- 1. From 1 June 2021 which consent forms should be completed if a patient wishes to provide her eggs to create embryos for use in her female partner's treatment and the couple is married or in a civil partnership?**

The egg provider should complete the new WPT form and name her partner on this form. She no longer needs to complete the WD form.

If the couple is married or in a civil partnership with each other they will not need to complete the legal parenthood consent forms (WP and PP) as the partner will automatically be the legal parent. However, if the egg provider wishes to be registered as the legal parent to any child born if she dies before eggs or embryos (that were created before her death) are transferred to her partner, she will need to give consent to posthumous use (using the WPT form) and complete the 'Your consent to being registered as the legal parent in the event of your death' (PBR form).

- 2. From 1 June 2021 which consent forms should be completed if a patient wishes to provide her eggs to create embryos for use in her female partner's treatment and the couple is not married or in a civil partnership?**

As well as the new WPT form, the egg provider should complete the PP form before treatment, to ensure she is the legal parent of the child born. The partner who will be receiving the treatment should complete the WP form to consent to the egg provider being the legal parent.

- 3. From 1 June 2021 which consent forms should be completed if a patient wishes to provide embryos which have already been created with her eggs and donor sperm and are in storage for use in her female partner's treatment and the couple is married or in a civil partnership?**

The embryo provider should complete the new WPT form and name her partner on this form. She no longer needs to complete the ED form. The consent given on the WPT form will supersede any previously given consent.

As the couple are married or in a civil partnership, they will not need to complete the legal parenthood consent forms (WP and PP) but the egg provider should complete the PBR form if she wishes to be registered as the legal parent to any child born if she dies before embryos (that were created before her death) are transferred to her partner.

- 4. From 1 June 2021 which consent forms should be completed if a patient wishes to consent to embryos which have already been created with her eggs and donor sperm and are in storage being used in her female partner's treatment and the couple is not married or in a civil partnership?**

As well as the new WPT form, the embryo provider should complete the PP form before treatment, to ensure she is considered the legal parent of the child born. The partner receiving treatment should complete the WP form to consent to her partner (the woman providing the embryos created with her eggs) being the legal parent.

**5. What if your patients are currently having treatment and have already completed a WD or ED form?**

Where a woman has already completed a WD or ED form to consent to providing eggs or creating embryos for her partner's treatment, she does not need to complete a new WPT form. The WPT Form only comes into use from 1 June 2021 for patients providing eggs or embryos for use in their female partner's treatment.

**6. Which consent forms should be completed if an egg provider wishes her partner to be able to use her eggs (or embryos created with her eggs) if she were to die, and if she wishes to consent to being registered posthumously as the parent of the child?**

Section 6.1 of the WPT form allows the egg provider to consent to treatment of her partner after the egg provider's death.

If the egg provider wishes to be registered as the legal parent of any child born if she dies before embryos (that were created before her death) are used, and the couple is married or in a civil partnership, the egg provider will need to complete the PBR form.

If the couple is not married or in a civil partnership, the egg provider should complete the PP form and her partner should complete the WP form. To help with this, please see the scenario tables in Annex III.

**7. If a female same-sex couple has unused embryos in storage but subsequently separate or divorce who can decide what happens to the remaining embryos?**

It is important to remember that embryos can only be stored and used in accordance with the consent of the egg provider whose gametes were used to create the embryos. This means that the future use of the embryos will be determined by the egg and sperm provider and what consent has been given. This should be explained to couples who wish to store unused embryos.

If a couple separate or divorce and the egg provider withdraws her consent to storage or to her ex-partner using the embryos, the ex-partner will not be able to have treatment using those embryos. Regardless of what the couple's intentions are, they need to understand the egg provider's right to withdraw consent and the importance of ensuring that they inform their clinic should their relationship status change.

**8. Which consent forms should be completed if a patient wishes to withdraw consent to her partner using her eggs and embryos created with her eggs in her treatment?**

If a woman consents to her eggs or embryos being used in her partner's treatment by completing the WPT form (or prior to this a WD or ED form) but subsequently wishes to withdraw her consent to them being used by her partner or ex-partner, a WC form (Withdrawing your Consent) should be completed. In section 3, the egg provider can withdraw her consent to the use or storage of her eggs or embryos (created outside the body with her eggs), and in section 4.1 she can specify that she is withdrawing her consent to their use in her partner's treatment.

**9. What about the legal parenthood implications of using the remaining embryos in future treatment if the couple separate or divorce?**

If the egg provider and her partner's personal circumstances change in the period since their last treatment (for example, if the couple has divorced or separated since their previous treatment), you need to consider whether the changes in their personal circumstances impact on consent and who will be the legal parents of any child born from future treatment.

Here are some examples of how changes to personal circumstances may impact legal parenthood:

- **A couple was married or in a civil partnership at the time of treatment and when embryos were created with donor sperm. They are now separated but are not yet divorced and no judicial separation order has been made (or, in the case of a civil partnership, a dissolution order or separation order has not yet been made). The egg provider comes back for treatment alone or with a new partner and wishes to use the embryos in storage or create new embryos.**
- As the couple are still married or in a civil partnership, there is a presumption that the estranged partner will still be the legal parent of any resulting child unless it can be shown that the estranged partner did not consent to the treatment. For more information about recording lack of consent see [Code of Practice](#) guidance 6.25-6.28 and the [LC form](#). In this scenario where a couple is still married or in a civil partnership and one partner wishes to have treatment before their divorce is finalised or before the civil partnership is dissolved (as the case may be), completion of the LC form will not necessarily guarantee that the ex-partner will not be the legal parent of any child that is born. In accordance with the Code of Practice guidance 6.26, if the civil partner or wife does not consent to the treatment, the centre should take all practical steps to obtain evidence of this. Steps may include, where appropriate and taking account of confidentiality, contacting the estranged partner (the partner not having treatment) and asking them to provide written confirmation that they do not consent to the proposed treatment. If unable to obtain appropriate written confirmation from the estranged partner, a centre could consider not providing treatment until the divorce has been finalised or an order for judicial separation has been obtained or, until the civil partnership has been dissolved or there is an order for separation (as the case may be). **A couple was married or in a civil partnership at the time of treatment and when embryos were created. The couple then divorce or judicially separate or the civil partnership is dissolved or there is a separation order. The egg provider comes back for treatment alone or with a new partner and wishes to use the embryos in storage or create new embryos.**
  - Since the couple are divorced (or the civil partnership has been dissolved) and the ex-partner provided no gametes to form the embryos, the ex-partner will not be the legal parent of any resulting child. If the egg provider returns with a new partner and they are not married or in a civil partnership, they can sign the WP and PP consent forms for the new partner to be recognised as the child's legal parent at birth.
- **A couple was not married or in a civil partnership at the time of treatment and embryos were created (and they completed WP and PP forms). The couple then separate. The egg provider comes back for treatment alone or with a new partner and wishes to use the embryos in storage or create new embryos.**
  - If treatment will take place with embryos left over from the previous treatment with the ex-partner, the egg provider and the ex-partner should withdraw their consents to the ex-partner being the legal parent using the Withdrawal of Consent Form (WC Form). If the clinic cannot obtain a written record of the former partner's consent or lack of consent, it should record the steps taken to establish whether the former partner consents to the treatment in the medical records.

The law of legal parenthood requires consent from both parties so as soon as one party withdraws consent, legal parenthood cannot be possible (2008 Act Section 44). Failure to withdraw at least one of the previously completed WP and PP consent forms, may mean that the ex-partner would be the legal parent of any child born in the future. If this consent is withdrawn, then it is possible for a new partner (if there is one and they are unmarried) to consent to being the legal parent. In this scenario, the egg provider and the new partner should complete the WP and PP forms.

**If you are uncertain about the implications of changes in your patient's personal circumstances particularly in relation to consent and legal parenthood, you and, if need be, your patients should seek legal advice.**

