Briefing for the Public Petitions Committee

**Petition Number:** PE1165

**Main Petitioner:** Lydia Reid, on behalf of Grandparents Apart

**Subject:** Calls on the Parliament to urge the Scottish Government, given its responsibilities for family law, registration of births and other policy areas, to make representations to the UK Government to ensure that the Human Fertilisation and Embryology Bill creates a right for biological fathers to have their names on the birth certificate of their children born through IVF procedures.

**Background**

Embryology, surrogacy and genetics are matters reserved to the UK Parliament (Scotland Act 1998, sch.5, sec.J). However, family law and the registration of births in Scotland are devolved to the Scottish Parliament.

It is not clear from the terms of the petition whether the petitioner is arguing that biological fathers should be **required** to have their names on the birth certificate or merely that they should be entitled to do so if they wish. In either case, this would represent a significant departure from existing practice.

The Human Fertilisation and Embryology Bill (the Bill) was introduced in the UK Parliament on 8 November 2007. The intention behind the Bill is to update the regulation of assisted reproduction and embryo research (primarily by amending the Human Fertilisation and Embryology Act 1990), to ensure that it is fit for purpose in the 21st Century. The Bill began its parliamentary passage in the House of Lords. The Bill had its Second Reading in the House of Commons on 12 May 2008 and Commons Committee Stage (the detailed examination of the Bill) took place on 19 and 20 May with Report Stage and Final Reading to follow. Opportunity to contribute to the Bill is, at this stage, limited. It is anticipated that the Bill will come into force early in 2009.

The Joint Committee on the Human Tissue and Embryos (Draft) Bill considered the question of whether donor-conception should be noted on an individual's birth certificate. Although a range of views (see below) were expressed on the right to know one's genetic identity, the specific right of biological fathers to have their names on the birth certificate of their children born through IVF procedures was not proposed:

“We believe that it is in the best interests of the child to know of their donor conception. Parents should be encouraged to be open and honest, and counselling and intermediary services should be available to them. However, we do not support those who call for a statutory duty on parents to tell their child of his or her donor-conception.” [para 272]

“Related to the arguments about a legal right to know is the issue of what, if anything, should be registered on a donor-conceived child’s
birth certificate. The Joint Committee took evidence from those who supported the fact of donor conception being noted on the birth certificate and from those who opposed such a move.” [para 273]

The Joint Committee recognised the force of the argument that the fact of donor conception should be registered on a person’s birth certificate as “assisted conception by its nature involves the authorities and we are deeply concerned about the idea that the authorities may be colluding in a deception”. However, it also recognised that this is a complicated area involving the important issue of privacy, as well as issues of human rights and data protection and therefore recommend that: “as a matter of urgency, the Government should give this matter further consideration”.

In Scotland, a father who is not married to the mother can only register the birth and be named in the register as the father if:

- he jointly signs the register with the mother;
- he and the mother sign declarations that he is the father; or
- a court declares that he is the father and the mother registers the birth.

*In vitro* fertilisation (IVF) involves the woman’s eggs and her partner's or donor's sperm being collected and mixed together in a laboratory to achieve fertilisation outside the body. The embryos produced may then be transferred into the female recipient. Although biological fathers of children born through IVF procedures are not specifically excluded from having their names on the birth certificate, nor are they generally entitled to do so unless they are the partner of the mother.

The Human Fertilisation and Embryology Act 1990 provides that where a couple are “treated together” in a licensed clinic using donated sperm, the male partner will be regarded as the father of any child born as a result. They are the legal parents of the child and can both put their names on the birth certificate. Although the Bill contains a number of significant provisions relating to parenthood in cases involving assisted reproduction (Part 2), it does not give biological fathers an automatic right to be named on the birth certificate.

The donor currently has no legal relationship or financial responsibilities towards the child. However, once a child born as a result of sperm donation reaches 18 they will be able to find out who their biological father is. Until recently, people who donated sperm could choose to remain anonymous. Donors had to give identifying details for HFEA Register, but these stayed confidential. Under the Human Fertilisation and Embryology Act 1990, people could apply to find out if they were conceived using donated sperm, eggs or embryos. They could also check whether they were related to someone they wanted to marry but they did not have the right to know who the donor was. Changes, effective from 1 April 2005, were introduced by the *Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations 2004* (SI 2004/1511). A Department of Health press release of January 2004 had previously announced the changes. A recent press release...
from the Human Fertilisation and Embryology Authority (HFEA) contains further background information on the changes regarding anonymity.

Knowing about one’s genetic heritage can be important for:

- the psychological and emotional wellbeing of donor-conceived people;
- medical reasons (knowing the medical history of people genetically related to you may help you to get an early diagnosis and effective treatment for an inherited disease).
- family relationships.

However, demand for donors has always outstripped supply and removing the right of anonymity and placing an obligation on donors to be named on the birth certificate may lead to a reduction in the number of donors and inhibit women from seeking IVF using donated sperm in UK licensed clinics (although, according to the HFEA, the number of men registering as sperm donors rose by 6% in the year following the law removing donor anonymity).

The Human Fertilisation and Embryology Authority (HFEA) is the body that regulates fertility treatment in the UK. It licenses all clinics providing IVF and keeps a register of all licensed fertility treatments and children born as a result. It also gives certain information to people who were conceived by donation if they request it.

The General Register Office for Scotland is responsible for the registration of births, marriages, civil partnerships, deaths, divorces and adoptions in Scotland.

**Scottish Executive Action**

In March 2007, the Scottish Executive published its Report on the Review of Infertility Services in Scotland. The review related to access to infertility services rather than the legal framework surrounding IVF procedures.

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20 May 2008

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