ARK Policy Brief

Journeys to parenthood five years on: Cross-border fertility treatment and legal parenthood for female same-sex couples in Northern Ireland

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Introduction

In 2021 our ARK policy brief examined the health inequalities and legal issues experienced by lesbian, gay, bisexual, trans, queer and other sexual and gender minority (LGBTQIA+) people in their pursuit of parenthood (Mackle and Bloomer, 2021). Five years on, there have been some changes made to fertility policy and legislation; however, some inequalities remain and some issues have become more prominent. One such issue relates to unmarried female same-sex couples who travel outside of the United Kingdom (UK) for fertility treatment. For women living in Northern Ireland (NI), this can include accessing treatment in the Republic of Ireland. However, there are legal implications linked to this if the couple are not married or in a civil partnership, meaning that in many cases, the non-birth mother cannot be legally recognised as the child's second parent where the relevant fertility treatment has taken place outside the UK.

Five years on from our original ARK paper, this briefing looks again at the journey to parenthood for female same-sex couples in Northern Ireland, focusing specifically on legal parenthood and what can happen when couples travel outside the UK for fertility treatment. We draw on existing research, recent discussions in the Assembly and community evidence gathered by HERe NI, an LGBTQIA+ organisation.

Legal parenthood and fertility treatment

The Human Fertilisation and Embryology Act 2008 (HFE Act) sets out the law on legal parenthood following assisted reproduction in the UK. How this works, however, depends on whether the couple are married or in a civil partnership. If the woman giving birth is married to, or in a civil partnership with, another woman, section 42 allows her spouse or civil partner to be treated as the child's legal parent, provided the requirements of the Act are met. This can apply whether the fertility treatment takes place in the UK or abroad (Human Fertilisation and Embryology Act 2008, s.42). The marriage or civil partnership must exist at the relevant time of embryo transfer or artificial insemination, and the spouse or civil partner must not have withheld consent.

For unmarried couples, the rules are different. Section 43, read together with the agreed female parenthood conditions in section 44, allows the non-birth mother to be recognised as the child's second legal parent where certain conditions are met. Both women must have consented to the non-birth mother being treated as a parent. Importantly, the treatment must also have been provided in the UK by a person to whom a Human Fertilisation and Embryology Authority (HFEA) licence applies (Human Fertilisation and Embryology Act 2008, ss.43–44).

For example, two female couples attend the same fertility clinic in the Republic of Ireland, use donor sperm and plan to raise their child together. If one couple is married or in a civil partnership, the non-birth mother may be recognised as the child's legal parent under section 42. If the other couple are unmarried, they do not have access to the same route of legal parenthood under section 43 because their treatment took place outside the UK.

Cross-border fertility treatment

We found similar issues in Northern Ireland in our 2021 research. Lesbian and bisexual women spoke about the financial barriers they faced when trying to access fertility treatment, and some had paid for private treatment in Northern Ireland or travelled elsewhere for treatment (Mackle and Bloomer, 2021).

More recent evidence from HERe NI suggests that travelling for treatment continues to be common. In a small survey of 19 lesbian, gay, bisexual, trans, queer, intersex and asexual (LGBTQIA+) women in Northern Ireland who had pursued fertility treatment, only a quarter had used a UK clinic and Dublin was the most common treatment location (HERe NI, 2026). None of the women who responded had received National Health Service (NHS) funded treatment and the average amount spent was £27,880. Among those who had considered NHS treatment, most had been required to pay for treatment themselves before they would become eligible.

The HERe NI survey was small and the women who took part were self-selecting, so the findings cannot be taken as representative of LGBTQIA+ women across Northern Ireland. They do, however, give some insight into the experiences of women who have recently gone through fertility treatment and reflect some of the problems identified in our earlier research.

Context and changes in Northern Ireland

This issue was formally raised during scrutiny of the Deaths, Still-Births and Baby Loss Bill. The Committee for Finance asked the Department of Finance specifically about the potential inequality faced by unmarried same-sex couples living in Northern Ireland but undertaking in vitro fertilisation (IVF) treatment in the Republic of Ireland (Northern Ireland Assembly Committee for Finance, 2025).

The Department confirmed that parents undertaking fertility treatment have different registration rights depending upon their marital status and where treatment is received. Married or civil-partnered couples may have both parents recognised irrespective of where treatment took place, while a restriction based on treatment location applies where the couple are neither married nor in a civil partnership.

The General Register Office also carried out initial investigations into the issue and contacted officials in other jurisdictions. The Department advised that resolving the issue was likely to require engagement with the UK Government because the relevant provisions are contained within the HFE Act 2008.

Correspondence from the General Register Office to an affected couple, seen by the authors, illustrates what this means in practice. The couple were advised that, as they did not meet the criteria under the HFE Act, the birth should be registered showing the mother only, and that the couple could then apply to the courts for the non-birth mother to adopt their child.

The Deaths, Still-Births and Baby Loss Act (Northern Ireland) 2026 addressed differences in the registration processes applying to some same-sex female couples. Previously, changes made to birth registration procedures for unmarried opposite-sex couples had not been replicated for same-sex female couples. These changes concern registration procedures and do not remove the section 43 requirement for treatment in the UK (Deaths, Still-Births and Baby Loss Act (Northern Ireland) 2026).

Marriage and unequal legal recognition

In September 2025, the UK Government was asked whether it would review sections 42 and 43 of the HFE Act in relation to unmarried same-sex couples. The Government stated that the current provisions provide protection against disputes over legal parenthood and highlighted the safeguards provided by treatment in HFEA-licensed clinics. It stated that at that time there were no plans to review sections 42 and 43 (UK Parliament, 2025). However, the current legislation already allows a woman to become a legal parent following fertility treatment outside the UK where she is married to or in a civil partnership with the birth mother.

Where treatment falls within the Irish statutory framework for donor-assisted human reproduction, couples complete written declarations of consent to parentage before treatment takes place. The declarations are completed by the intending mother and by her spouse, civil partner or cohabitant, and witnessed at the treatment facility (Children and Family Relationships Act 2015, ss.9 and 11).

Couples from Northern Ireland who have treatment in the Republic may have completed written consent to parenthood before their treatment began, with that consent witnessed as part of the process. This does not, however, meet the requirements of section 43 of the HFE Act. Given that consent to parenthood can be formally recorded before treatment in the Republic, the distinction between married and unmarried couples needs further consideration.

Implications for families

In addition, legal parenthood and parental responsibility are not the same thing. Parental responsibility is concerned with the rights and responsibilities a person has in relation to a child and the decisions they can make about their care. This can leave a non-birth mother having to deal with questions about her legal status despite the fact that she and her partner had always intended to parent the child together.

The HERe NI survey provides an indication of how this is experienced. Five of the 19 respondents reported encountering issues surrounding legal rights to parenthood, principally arising from treatment having taken place in Dublin. Respondents affected by this issue reported adoption as the route available to secure recognition of the non-birth mother. Where a couple had used reciprocal IVF, this could mean the genetic mother adopting her own biological child (HERe NI, 2026). There is currently limited evidence on the number of families in Northern Ireland affected by this particular problem. This in itself requires attention.

Conclusion

The original Journey to Parenthood briefing (Mackle and Bloomer, 2021) argued that the legal implications of different routes to conception needed greater consideration. The current position demonstrates that this remains relevant five years later. Accessing regulated fertility treatment across the border in the Republic of Ireland or abroad may be a sensible and safe reproductive choice for a couple. However, for an unmarried female couple in Northern Ireland, it can also mean that the non-birth mother does not have access to the legal parenthood provisions that would have applied if the treatment had taken place in the UK.

Recommendations

1. The UK Government should review sections 42–44 of the Human Fertilisation and Embryology Act 2008 and consider whether the current distinction between married/civil-partnered and unmarried female couples remains appropriate where fertility treatment takes place outside the UK.

2. Consideration should be given to whether legal parenthood could be recognised where an unmarried couple have received treatment through an appropriately regulated fertility clinic outside the UK which provides equivalent safeguards around informed consent. These include in relation to donor screening, record keeping and access to donor information, and where there is clear evidence that both women consented to treatment and intended to become the child's parents. This could retain important safeguards around consent and legal certainty without requiring marriage or civil partnership.

3. The Northern Ireland Executive should continue engagement with the UK Government on this issue. Recent changes to birth registration should not be regarded as resolving the wider problem of legal parenthood following fertility treatment outside the UK.

4. Clear information should be made available to female same-sex couples considering fertility treatment outside the UK. Couples need to understand before treatment that their marital or civil-partnership status, and where treatment takes place, may have implications for legal parenthood. The relevant health departments and fertility providers in both jurisdictions should ensure that couples receive clear information before treatment begins.

5. Further research is needed to establish the number and experiences of families in Northern Ireland affected by these provisions. This should include consideration of whether couples were aware of the legal implications before travelling for treatment and what legal processes they have had to undertake following the birth of their child.

6. LGBTQ+ organisations, fertility services, legal professionals and relevant government departments should work together to improve information for prospective parents on the legal implications of fertility treatment both within and outside the UK. This could include a public health awareness campaign.

7. The Department of Finance should consult on changing birth certificates to offer 'Parent 1' and 'Parent 2' terminology, including with trans and non-binary parents. This should accompany consideration of the underlying rules on legal parenthood.

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