

Draft Human Tissue and Embryos Bill

Submission to the Joint Committee

13th June 2007

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1. The Equality Network is a network of lesbian, gay, bisexual and transgender (LGBT) organisations and individuals in Scotland working for LGBT equality. We welcome the opportunity to submit evidence to the Joint Committee on the draft Human Tissue and Embryos Bill.

2. We have confined our submission to those provisions of the draft bill that directly affect equality for LGBT people. Overall, we very much welcome those parts of the bill. They remove some of the last remaining direct discrimination on grounds of sexual orientation from UK legislation. To do that is entirely consistent with other recent legislation, including the Civil Partnership Act 2004, the Adoption and Children Act 2002, the Adoption and Children (Scotland) Act 2007, and the Equality Act 2006.

Treatment conditions – clauses 21 and 31

3. We welcome the proposal to remove, from the existing conditions for providing fertility treatment, the specific requirement to take account of the need of the child for a father. We agree with this proposal because—

- Clinics should evaluate the potential welfare of the child (who may be born as a result of treatment) in the round, and without discrimination on grounds of sexual orientation or other grounds.
- The Civil Partnership Act 2004 provides an effectively identical legal framework for civil partners to that which applies to married couples. Adoption legislation, in both England/Wales and Scotland, allows same-sex and mixed-sex couples (married, civil partnered, or cohabiting) to apply to adopt jointly. It would be inconsistent with this existing

legislation to apply to fertility treatment a statutory criterion that discriminates in favour of mixed sex couples.

- Research evidence continues to accumulate which indicates that children do as well with two parents of the same sex as they do with mixed-sex parents^{1 2}.

Access to the register of information – clause 32

4. We agree with the proposal to allow a donor-conceived person who is about to enter a civil partnership to obtain information about whether they are genetically related to their partner. As a starting point, we believe that it is now an accepted principle of UK legislation that the law that applies to marriage should apply equally to civil partnership.

5. The current law on forbidden degrees of relationship for marriage and civil partnership in Scotland does not extend to genetic relationships which are not legally recognised family relationships as a result of the operation of sections 27 to 29 of the Human Fertilisation and Embryology Act 1990. However, a couple related in that way may wish to know about their genetic relationship before deciding to marry, and the concerns that such a couple might have could equally concern a couple who are considering civil partnership.

6. It might be argued that because civil partners will not have a child who is the genetic child of them both, it matters less, than for a married couple, if they are unknowingly closely related. However, some civil partners might choose to have a child who is genetically related to them both. For example, a woman in a civil partnership might choose to become pregnant using donated sperm from a relative of her partner. Knowledge of a close genetic relationship between the civil partners might be significant in such a case.

¹ ‘A comparative analysis of adoptive family functioning with gay, lesbian and heterosexual parents and their children’, S. Erich, P. Leung and P. Kindle, *Journal of GLBT Family Studies*, vol 1 issue 4, pages 43-60, 2005

² ‘Research on Same-sex Parenting’, Annex B of ‘Adoption – better choices for our children’, Scottish Executive adoption policy review group report phase II, June 2005

7. The UK Government's "Review of the Human Fertilisation and Embryology Act", December 2006, stated (paragraph 2.59) that Parliament would have the opportunity to debate whether information on genetic relatedness should also be available to cohabiting couples. For similar reasons to those stated above, if such an amendment is considered, in our view the information should be equally available to mixed-sex and to same-sex cohabiting couples.

Parenthood – clauses 48 to 52

8. We welcome the proposal to remove the sexual orientation discrimination from the law relating to who is the other parent of a child born to a woman as a result of fertility treatment.

9. The law currently requires the same-sex partner of woman, who conceives a child after fertility treatment, to apply to adopt her partner's child in order to become the other parent. It is discriminatory to require a same-sex partner to use this relatively complex and costly process, when it is not required for a mixed-sex partner.

10. As noted above, the principle of treating the civil partner of a mother in the same way as the husband of a mother, and treating a 'non-civil-partnered' same-sex partner the same as an unmarried mixed-sex partner, is now well established in other law. It is also supported by the increasing amount of evidence on outcomes for children of same-sex parents (examples referenced above).

Parental orders – clauses 60 and 61

11. We welcome the proposal to make parental orders, currently only available to married couples, available also to civil partners and to other mixed-sex or same-sex couples living as partners in an enduring family relationship.

12. By requiring couples, other than married couples, to use the adoption route to transfer parenthood from a surrogate mother, rather than a parental order, the current law discriminates on grounds both of marital status and of sexual orientation. Again, it is consistent with other recent legislation including adoption and civil partnership legislation, to treat these couples equally.

13. We welcome the time-limited retrospective effect provided by clause 60(11), which could be of use to some same-sex couples, who are not currently able to apply for a parental order under section 30 of the 1990 Act.

14. We also welcome the provisions of clause 66, allowing not-for-profit organisations to receive payment for certain kinds of assistance in the making of surrogacy arrangements, and changing the rules on advertising. These changes will make it easier for couples who are unable to have a child who is the genetic child of at least one of them, except by surrogacy, to do so.