

EXECUTIVE NOTE

THE PARENTAL RESPONSIBILITIES AND PARENTAL RIGHTS AGREEMENT (SCOTLAND) AMENDMENT REGULATIONS 2009

SSI/2009/191

1. This instrument is being made in exercise of the powers conferred by section 4(2) and section 103(2) of the Children (Scotland) Act 1995. The instrument is subject to negative resolution procedure and will come into force on 1 September 2009.

Policy Objectives

2. The purpose of the instrument is to amend the Parental Responsibilities and Parental Rights Agreement (Scotland) Regulations 1996 to prescribe the form of an agreement between a child's mother and the child's second female parent that the second parent should have parental responsibilities and parental rights (PRRs) for the child.

3. The Human Fertilisation and Embryology Act 2008 introduced new rules about legal parenthood of children born following treatment licensed under the Act. The treatments include the placing in a woman of an embryo, of sperm and eggs, or artificial insemination of the woman.

4. If a woman conceives and gives birth following such treatment, she becomes the child's legal mother. Under the Children (Scotland) Act 1995, the child's mother will automatically have PRRs for the child. If the mother has a female partner, the rules about the legal relationship between the child and the mother's partner are set out in the 2008 Act.

5. Under the 2008 Act, if the child's mother is in a civil partnership, and her civil partner consents to the treatment, both women will be treated as the child's parents and will automatically get PRRs for their child. If the child's mother is in a relationship with a woman who is not the mother's civil partner, the other woman can – if the couple meet certain conditions – become the child's other parent. If a couple who meet the conditions register the birth of their child together, the other parent will automatically get PRRs for their child.

6. These regulations allow a couple who are not civil partners and who have not jointly registered their child's birth to agree to give the other parent PRRs for their child. The form of agreement mirrors that currently available to opposite-sex couples, with changes to reflect the other parent's gender and the slightly different rules of the 2008 Act. After making the agreement, the child's parents must register it in a public register called the Books of Council and Session for it to take effect.

Consultation

These regulations are in consequence of the Human Fertilisation and Embryology Act 2008, which covers matters reserved to the UK Government. The UK Government consulted extensively on its proposals before bringing the Bill to Parliament. Because the regulations

simply mirror what exists for opposite-sex couples, we did not consider it necessary to consult on them.

Financial Implications

These regulations have no significant financial effects on the Scottish Government, local authorities, business, charities or the voluntary sector. We foresee a very small number of these agreements being registered. Less than 1,000 of the equivalent agreements for opposite-sex couples are registered each year; and we expect that number to decline given the provisions of the Family Law (Scotland) Act 2006 that give automatic PRRs to fathers who jointly register their child's birth with the mother and our recent publicity work in family law.

Constitution, Law and Courts Directorate
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