

WELFARE REFORM ACT 2009

EXPLANATORY NOTES

BACKGROUND AND SUMMARY

Part 4 – Birth registration

29. In June 2008 the Government announced in the White Paper *Joint birth registration: recording responsibility* its intention to promote child welfare and parental responsibility by ensuring, where possible, that unmarried parents jointly register the birth of their children. In order to achieve this objective, the Act makes a number of amendments to the Births and Deaths Registration Act 1953 ('the 1953 Act') and amendments to the Children Act 1989 relating to how parental responsibility is acquired by unmarried fathers.
30. Whereas a man who is married to a child's mother has an automatic right to be recorded as the father of the child on the birth register (since he is presumed in law to be the father), this is not the case for unmarried fathers. Under existing legislation, a father who is not married to the mother of his child at the time of the child's birth may have his details entered on the birth register only with the co-operation of the child's mother or where there is a court finding of his paternity.
31. The amendments increase the ways in which an unmarried father may register jointly with the child's mother. They provide for a new form of declaration which the father may complete, and which may be countersigned by a broader range of witnesses than the current statutory declaration, making the process less costly and bureaucratic than the current system. In addition, they make provision for the registrar to include a man's details on the birth register where a paternity test carried out by an accredited body shows him to be the father.
32. As well as widening the routes through which unmarried couples may jointly register, the provisions included in Part 1 of Schedule 6 confer (and contain regulation-making powers which will allow to be conferred) additional rights and duties on both unmarried mothers and fathers, in order to ensure that unmarried fathers' details are entered on the birth register in as many cases as possible.
33. In the majority of cases, unmarried parents will continue to register jointly in co-operation with each other. In most of the remaining cases, the mother will be required to provide the father's details to the registrar, in order to enable the registrar to contact the father and ascertain and include his details on the birth register. Similarly, an unmarried father will have a corresponding right to provide his details to the registrar independently of the mother, and to have his name entered on the register subject to acknowledgement by the mother that he is the child's father. Whilst in practice such approaches should be the exception, the provisions allow in this way for joint registration by couples who are not co-operating with each other. There will, however, be some cases where a mother will be exempt from the duty to provide the father's details, in which case sole registration will take place. These will include, for example, cases where the mother does not know the identity of the father (or his whereabouts), or where she fears that her safety – or that of her child – might be put at risk were the father to be contacted.

*These notes refer to the Welfare Reform Act 2009 (c.24)
which received Royal Assent on 12 November 2009*

34. The structure of the proposed new legislation reflects the practical differences between registration by a married father and an unmarried father, not least the difficulty in identifying a man as the father where he is not married to the child's mother. When the 1953 Act was introduced as a consolidation of legislation dating from the 19th Century, the birth of a child to unmarried parents was very much the exception. Although amendments made by the Children Act 1989 and other family law measures have extended the provisions for registering unmarried fathers the existing legislative framework assumes that a majority of parents will be married to each other and, if not, will co-operate with each other in registering their child's birth. It does not adequately address the problems which may arise when this is not the case.
35. The amendments contain provisions which enable regulations to be made conferring new duties on an (alleged) father who is not married to the mother to provide information concerning a birth, and strengthen his right to provide such information. The 1953 Act already treats an unmarried father as a qualified informant concerning the birth in certain circumstances. Under the new provisions, a man will also be a qualified informant if he is shown through an accredited paternity test to be the father. Where this is the case, regulations may provide for his details to be recorded on the register.
36. The new provisions allow regulations to provide that where a man has been named as the father by the child's mother, he will be under a duty to provide the information requested by the registrar and – if he acknowledges that he is the father – to have his details recorded on the register.
37. Both the 1953 Act and the Children Act 1989 refer to a child whose father and mother were, or were not, married to each other at the time of the child's birth. Such references are to be read in accordance with section 1 of the Family Law Reform Act 1987 ('the 1987 Act') which imports a wider meaning than the words alone suggest. For example, in accordance with the 1987 Act, a time of a child's birth extends to include any time beginning with the insemination or conception and ending with the child's birth. The effect of this is that where a child's parents were married at the time of that child's conception, the provisions under the 1953 Act relating to the parents of a child who were married to each other at the time of the child's birth will apply even if the parents are in fact no longer married at the time of the child's birth. The 1987 Act also treats a person who has a parent by virtue of provisions of the Human Fertilisation and Embryology Act 2008 ('the HFE Act') who is the civil partner of the child's mother, as a person whose father and mother were married to each other at the time of that person's birth.
38. As a result of provisions in the HFE Act, the civil partner of a child's biological mother who is treated as a parent under that Act has similar rights to a married father in relation to birth registration. A second female parent who is a parent by virtue of section 43 of the HFE Act has rights in relation to birth registration in line with those of an unmarried father.
39. Under section 43 of the HFE Act, for a woman who is not the civil partner of the mother to be regarded as the second female parent, both the woman and the mother must have consented to the woman being treated as the second parent of any child resulting from licensed treatment.
40. Where relevant, the new provisions relating to joint birth registration that are applicable to unmarried fathers will also apply to a woman who is a parent by virtue of section 43 of the HFE Act.