

ILGA-Europe Annual Conference 2013

WS8: Complex Family Realities Require Equally Complex Forms of Recognition

Legal parents in complex rainbow families



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1989 Registered Partnership

2010 Adoption

2012 Marriage

If you ask someone from the LGBT community about the most important wins in Danish family law, they most likely will answer: Registered partnership, adoption and marriage. I don't agree at all.

1989 Registered Partnership

1999 Same-Sex Legal Parents (2nd Parent Adoption)

2010 Adoption

2012 Marriage

2013 Parenthood Recognition (Children's Act)

The registered partnership was a breakthrough. But in practice adoption is not possible due to lack of children to be adopted, and from a family law point of view, the marriage didn't bring much compared to registered partnership.

But in 1999 it became possible for a child to have two parents of the same sex – by means of second parent adoption. That was something new. And this year we got amendments to the Children's Act, which adds significantly to the protection of the rights of children and parents in rainbow families. I think these amendments are quite spectacular, but you can judge for yourself after this presentation.

Children's Act

Determination of lineage

- Registration of parenthood
- Framework for court ruling

Adoption Act

Transfer of parenthood

- Second parent adoption
- Adoption of unrelated child

All of this revolves around two laws: the Children's Act (CA) and the Adoption Act (AA).
The first deals with determination of lineage, whereas the second deals with transfer of parenthood.

Children's Act

Determination of lineage

- Registration of parenthood
- Framework for court ruling

- Danish citizenship if either parent is Danish
- Legal parenthood for stillborn child
- Married or unmarried couples

Adoption Act

Transfer of parenthood

- Second parent adoption
- Adoption of unrelated child

- Danish citizenship by naturalisation if birth mother foreign
- Cannot adopt a stillborn child
- Married couples only

There are differences.

- In the CA the child inherits a Danish citizenship from either of its parents. In the AA the child does not inherit the citizenship from its adoptee. Thus, if a foreign woman gives birth to a child in Denmark, the child will be Danish, if her partner is a Danish man, but not if her partner is a Danish woman.
- The CA enables recognition of parenthood to a stillborn child, but you cannot adopt a stillborn child.
- Most importantly the CA enables recognition of married as well as unmarried parents. In contrary the AA only relates to married couples.

Children's Act

Determination of lineage

- Registration of parenthood
- Framework for court ruling

- Danish citizenship if either parent is Danish
- Legal parenthood for stillborn child
- Married or unmarried couples

- Two legal parents from birth

Adoption Act

Transfer of parenthood

- Second parent adoption
- Adoption of unrelated child

- Danish citizenship by naturalisation if birth mother foreign
- Cannot adopt a stillborn child
- Married couples only

- Complex conditions for adoption, in general not possible from birth

Under the CA a child gets two legal parents from the birth. The AA is hampered by number of rules and conditions (typically created for another scope, i.e. second parent adoption of an older child by a new spouse of one parent, and not for recognition of a newborn child in a planned family expansion). As a consequence it may not be possible to second parent adopt immediately after birth resulting in numerous problems including such concerning parental leave.

Children's Act

Determination of lineage

- Registration of parenthood
- Framework for court ruling

- Danish citizenship if either parent is Danish
- Legal parenthood for stillborn child
- Married or unmarried couples

- Two legal parents from birth

Adoption Act

Transfer of parenthood

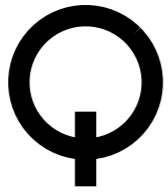
- Second parent adoption
- Adoption of unrelated child

- Danish citizenship by naturalisation if birth mother foreign
- Cannot adopt a stillborn child
- Married couples only

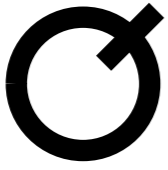
- Complex conditions for adoption in general

Inferior solution for rainbow families

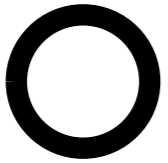
In conclusion: Second parent adoption is an inferior solution for rainbow families and not something we should strive for. Would we ever say to a man in an opposite-sex couple who just got a child, that he should marry the mother and adopt the child if he wants to be legal parent? Of course not, so why should we? Instead rainbow families should be recognised under the Children's Act. In the following the new Danish Children's Act will be presented.



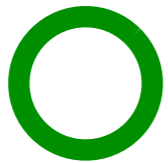
Woman (legal gender)



Man (legal gender)



Either (legal gender)



Legal parent



Marriage or Registered partnership (i.e. contract)

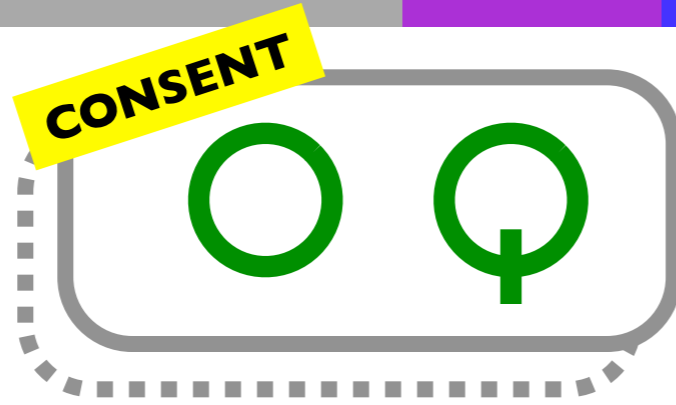


Cohabitants (i.e. no contract)



Either

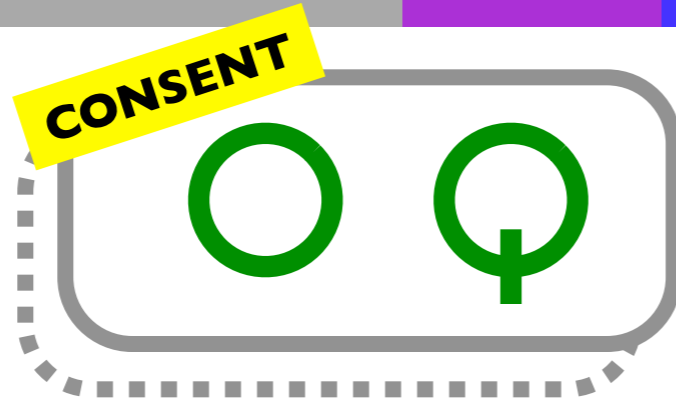
Children's Act - assisted reproduction



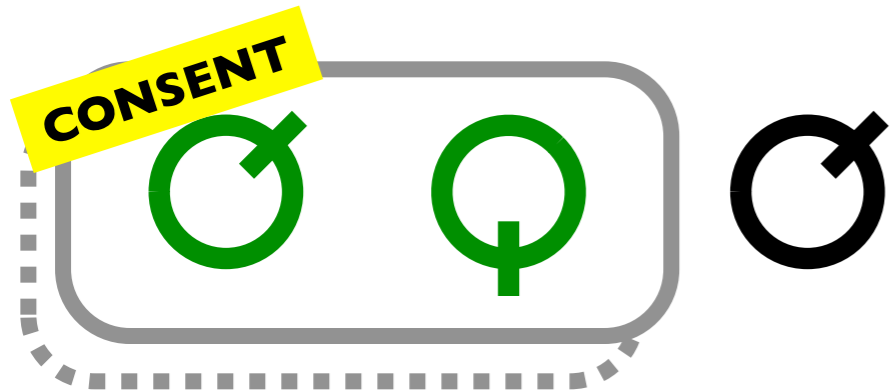
Anonymous
sperm donor

A section of the CA deals with assisted reproduction. That's where we start. The first example is a couple using sperm from an anonymous donor. This situation is very simple: there are only two identifiable adults and a child. The partner of the woman to be treated has consented to the treatment, and doing so he or she is considered parent to the child. The partner can be male or female, and they can be married or not married.

Children's Act - assisted reproduction

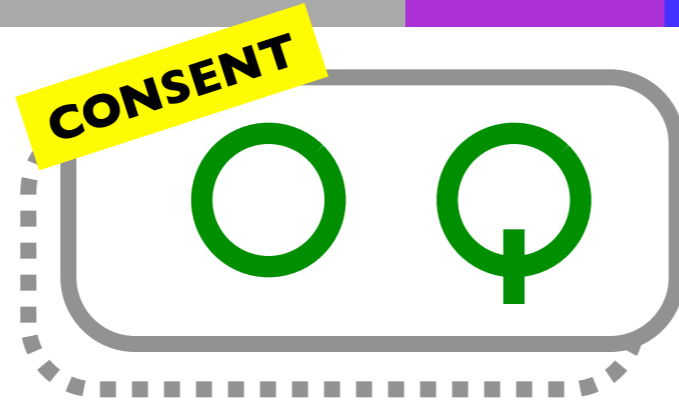


Anonymous
sperm donor

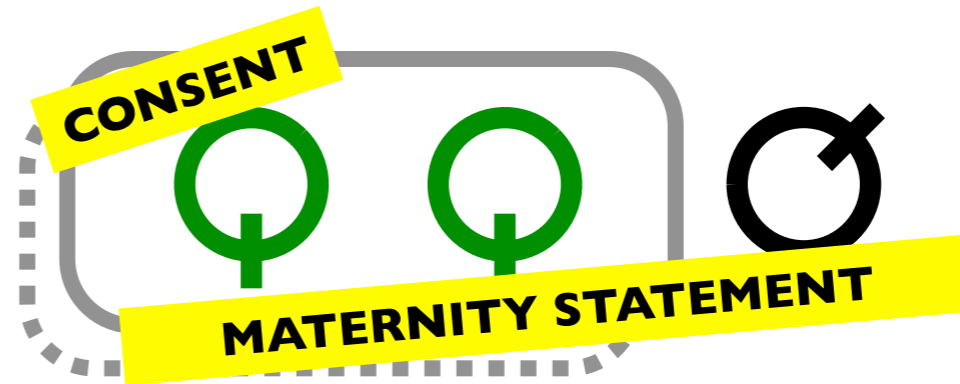
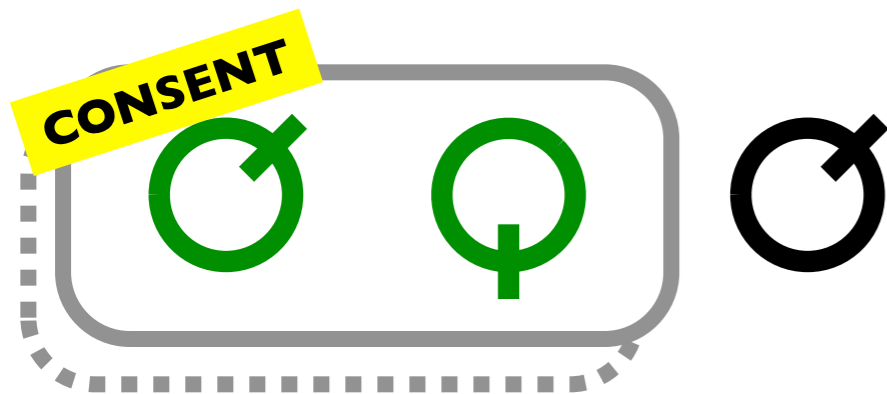


Last year it became possible for opposite-sex couples to use a known sperm donor. Again the partner of the woman must consent to the treatment, and he will be considered father to the child. Again this goes for married as well as unmarried couples.

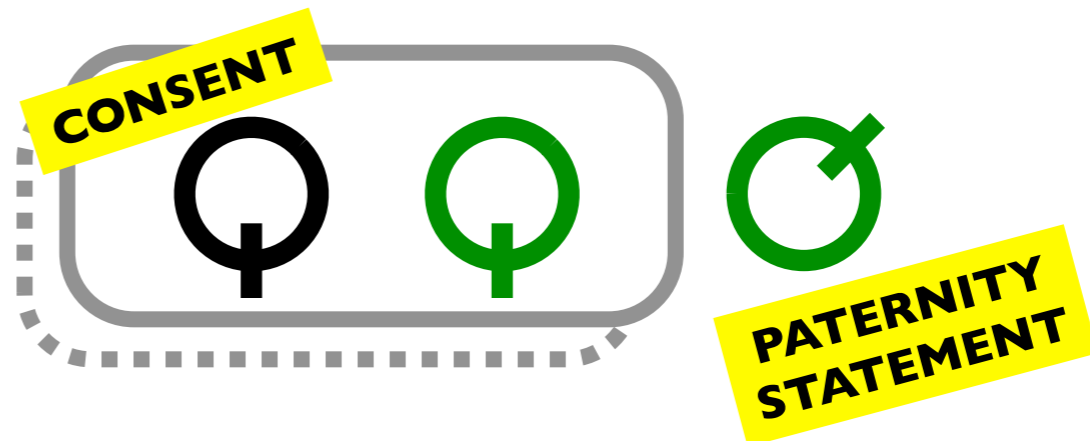
Children's Act - assisted reproduction



Anonymous sperm donor



Known sperm donor



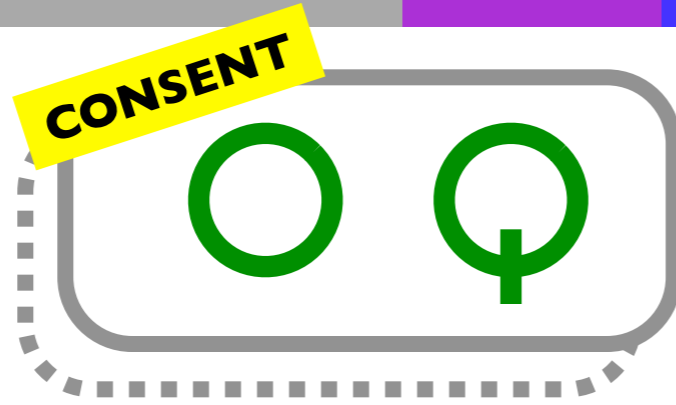
Father

With the amendments to the CA same-sex couples also get access to using a known donor, but these couples have two options. The partner of the mother must consent. And in addition to this a statement on parenthood must be made:

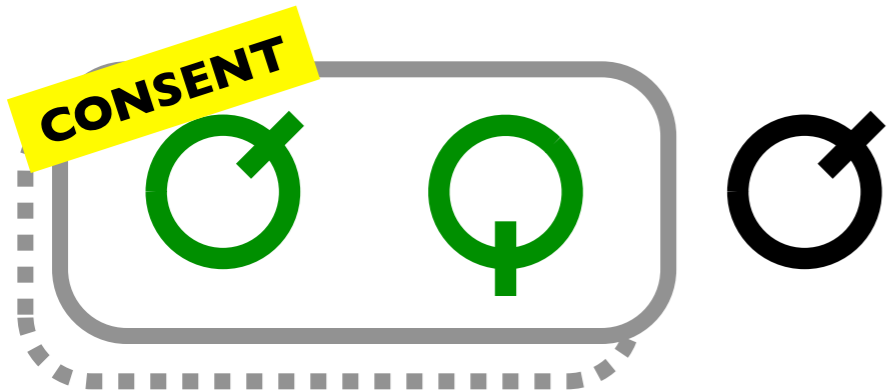
- 1) The woman, her partner and the man can sign a maternity statement saying, that the partner is considered parent.
- 2) The man can sign a paternity statement, that he is the father.

Thus, the three parties can plan their family, and the law will recognise their decision on parenthood even before conceiving.

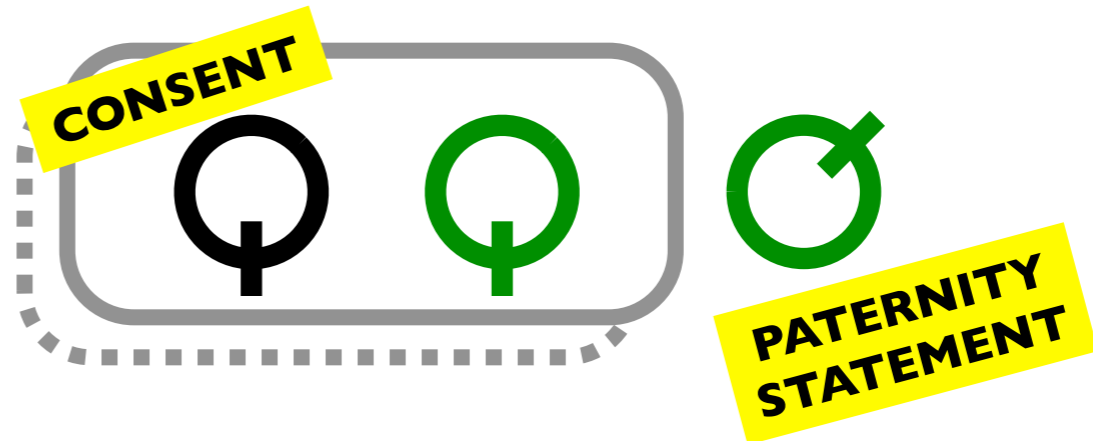
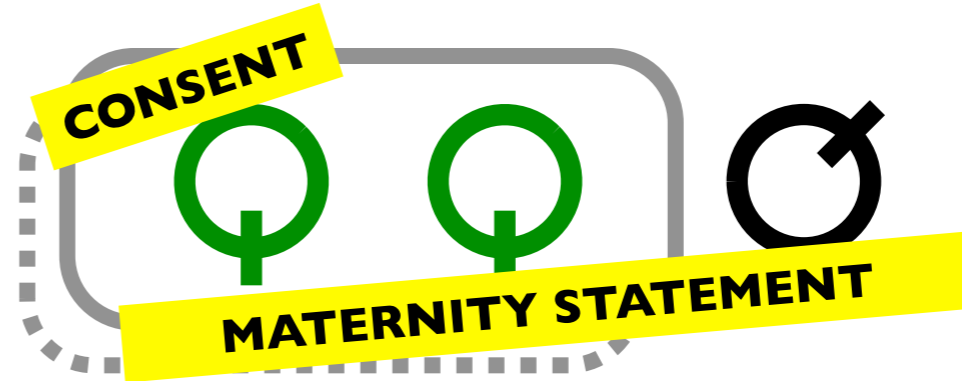
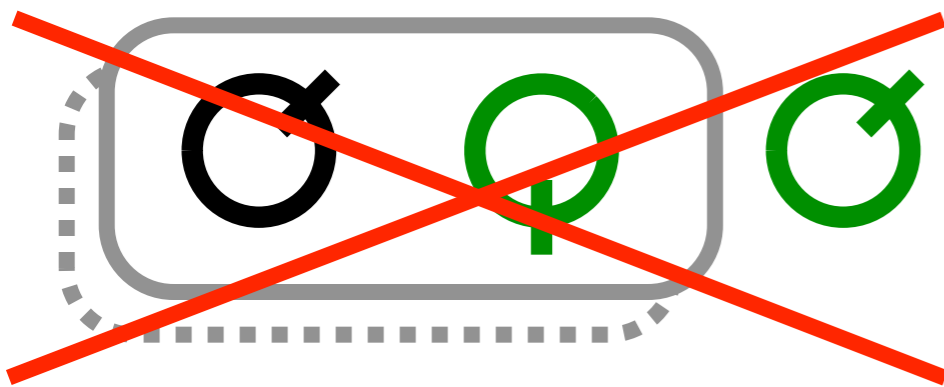
Children's Act - assisted reproduction



Anonymous sperm donor



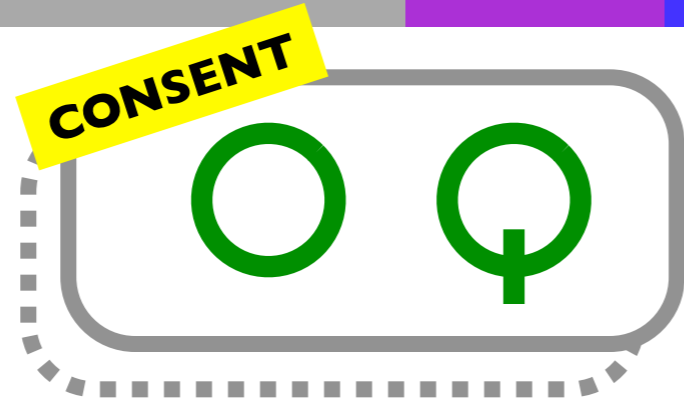
Known sperm donor



Father

The same possibilities are not provided for opposite-sex couples.

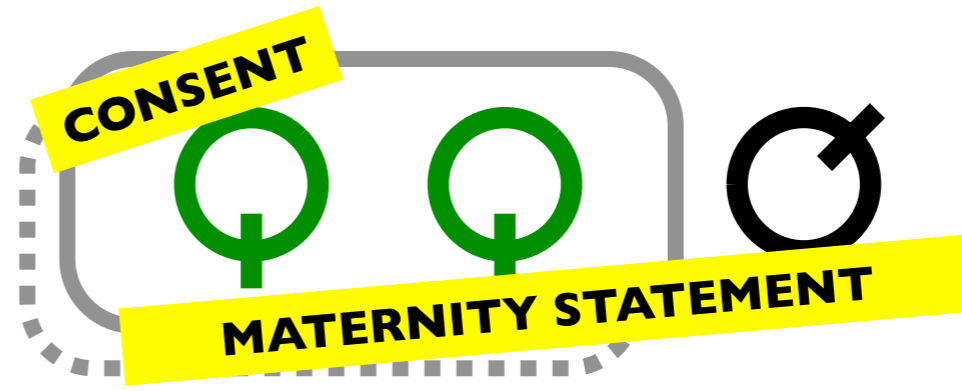
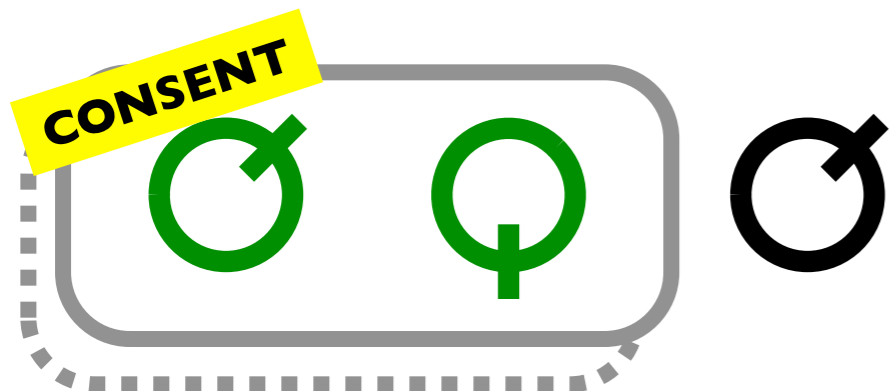
Children's Act - assisted reproduction



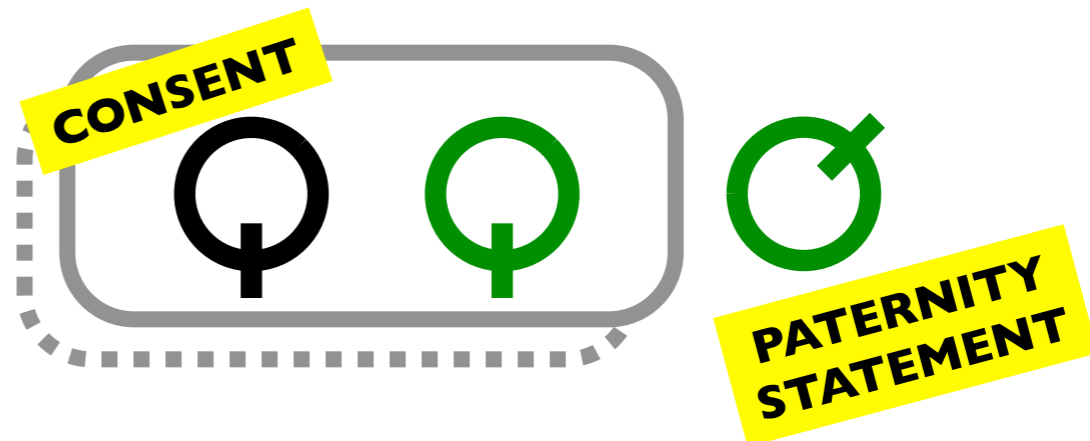
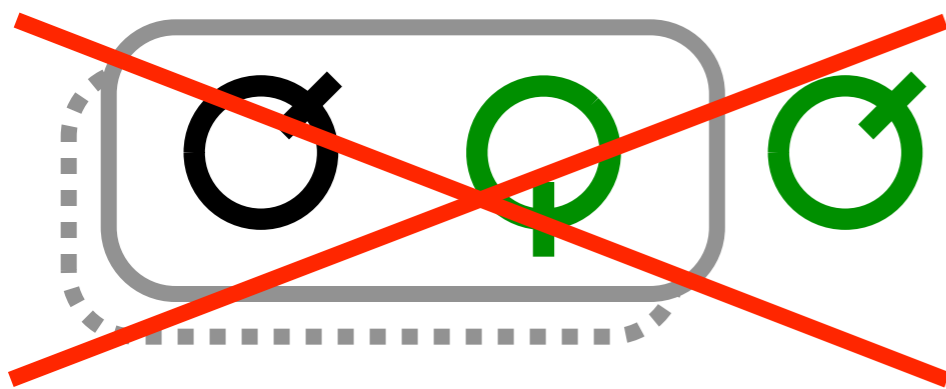
Anonymous sperm donor



PATERNITY STATEMENT



Known sperm donor



Father

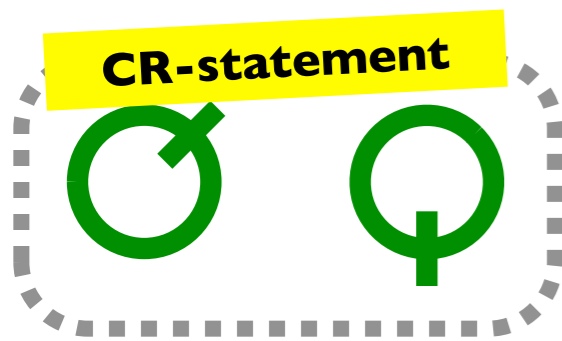
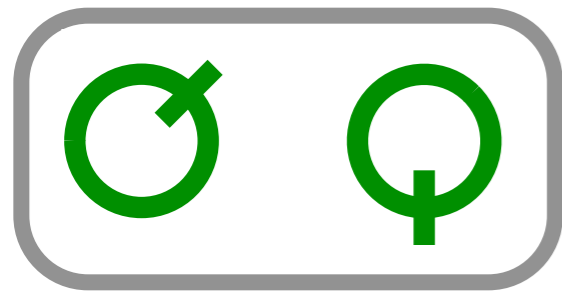
To complete the picture two more family types – which may or may not be rainbow families – are considered.

1) A single woman using anonymous sperm donation.

2) A man and a woman, who are not a couple, get a child. He must sign a paternity statement. Thus a single woman cannot use a known donor, unless he becomes the father. Many rainbow families consists of e.g. a straight woman, who is tired of waiting for prince Charming and gets a child with e.g. a gay man.

Now, all of these families are recognised in the section of the Children's Act dealing with assisted reproduction. It states who the law considers parents of the child.

Children's Act - recognition of parenthood

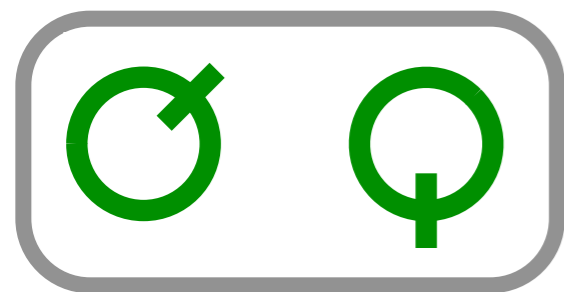


That the law considers these parties parents does not mean, they are legal parents yet. This happens, when the child is born, and the rules are stated in another section of the Children's Act. First, consider an opposite-sex couple. If they are married the "pater est"-rule (paternity assumption) applies, stating, that the husband is by default the father of the child.

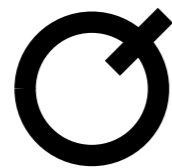
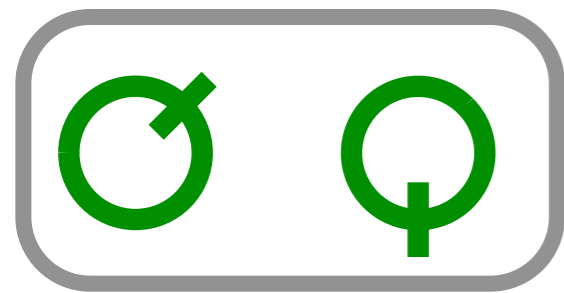
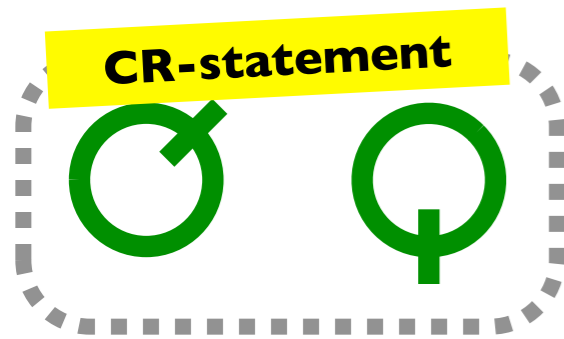
Marriage, however, is not that big a thing in Denmark, and half of the population is not married. Thus, half of the children born in Denmark are born to unmarried parents. That's the reason a very simple procedure for recognising unmarried parents has been made: The parents signs a care and responsibility statement. Doing so the parents are registered as legal parents when the child is registered.

Note, that as the man is considered parent, if he tries to flee his obligations he will be sued by the authorities and will become legal parent by court ruling.

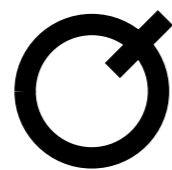
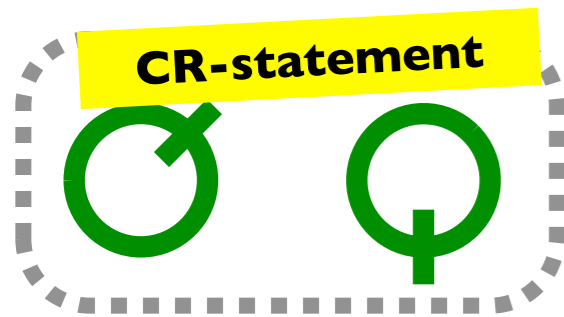
Children's Act - recognition of parenthood



CR-statement



CR-statement

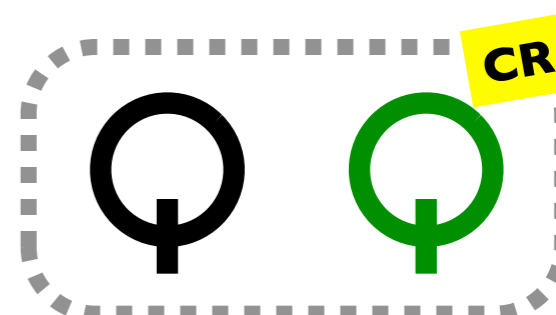
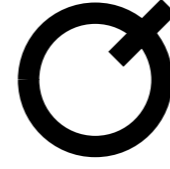
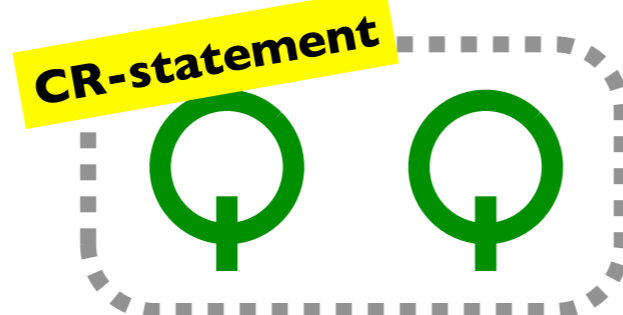
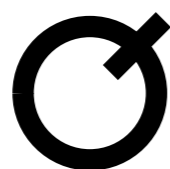
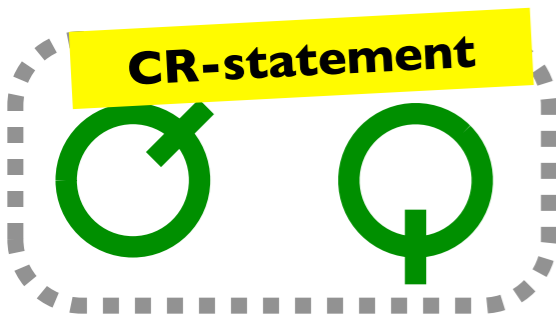
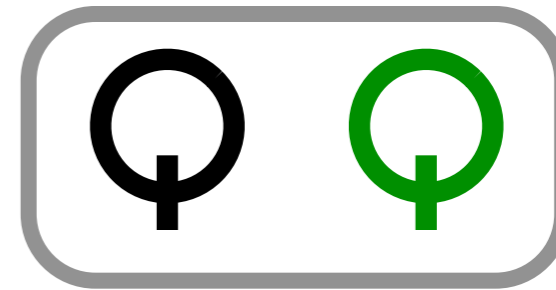
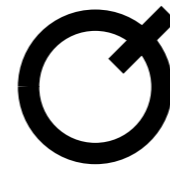
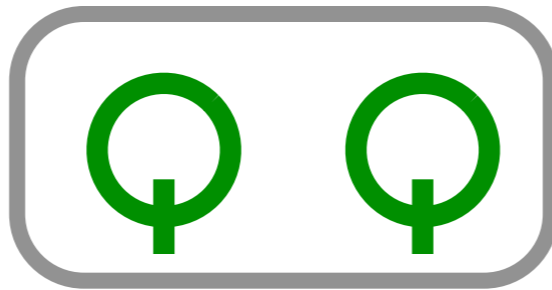
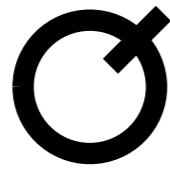
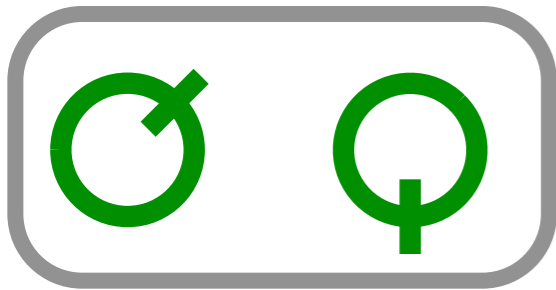
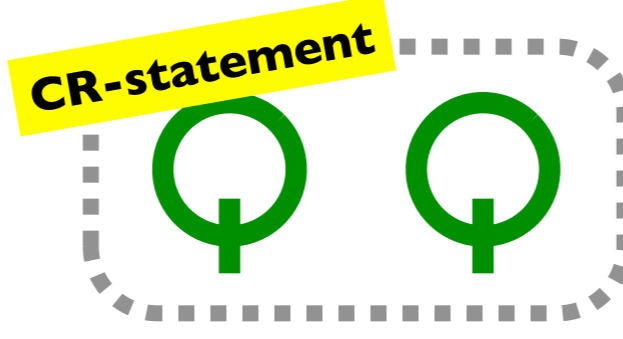
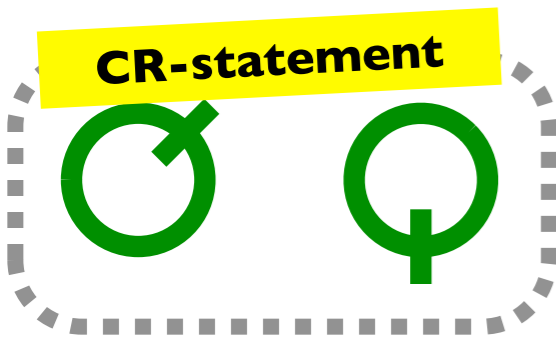
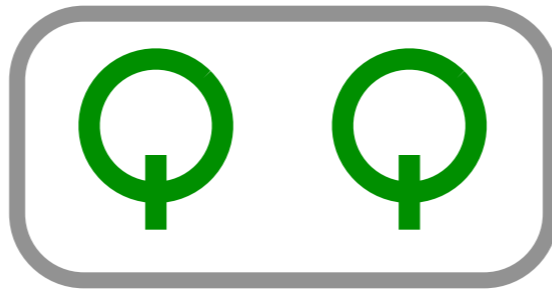
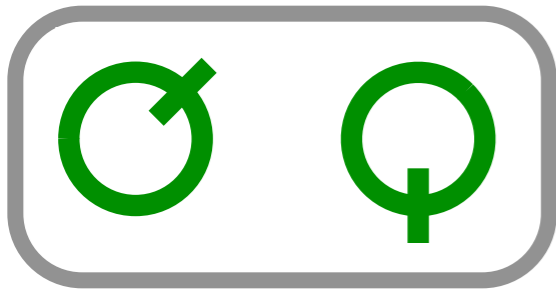


When last year it became possible for opposite-sex couples to use a known donor, the recognition rules were made to apply for these cases too.

Children's Act - recognition of parenthood



CR-statement



CR-statement

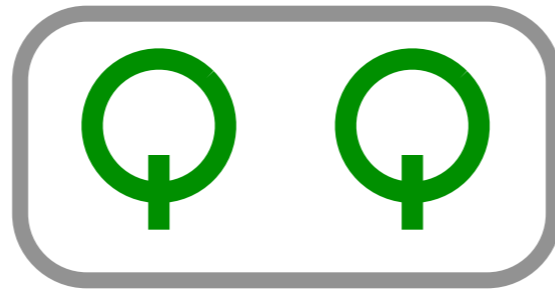
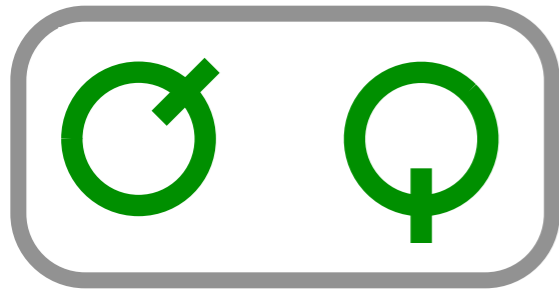
Similarly with the new amendments to the Children's Act. If the mother is unmarried, a care and responsibility statement is needed. Those who are considered parents can now be registered as legal parents.

In this way the Children's act covers a multitude of family types.

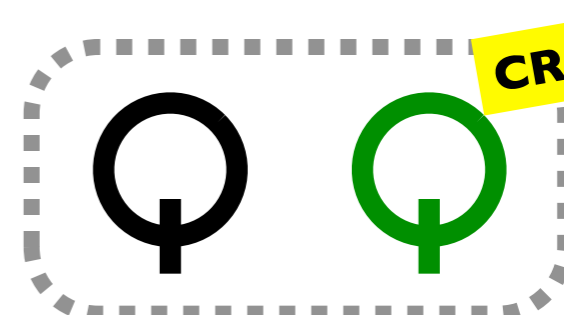
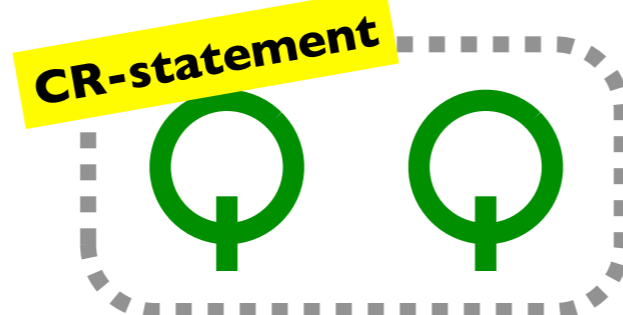
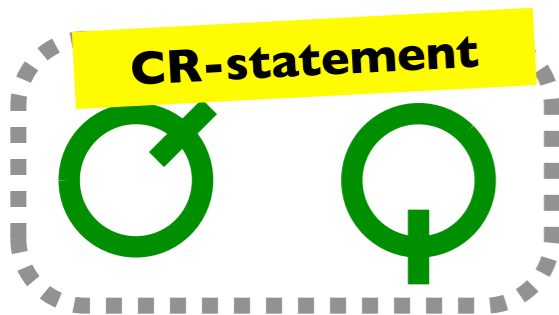
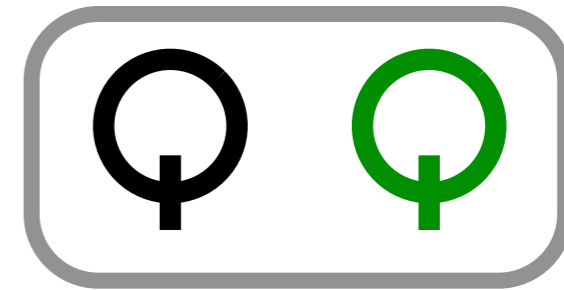
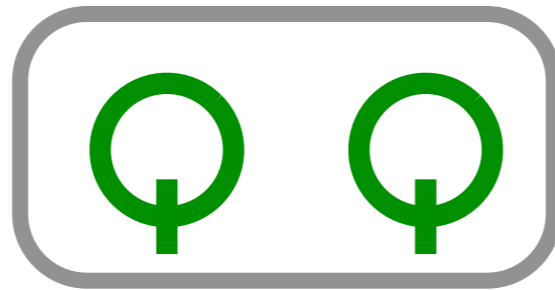
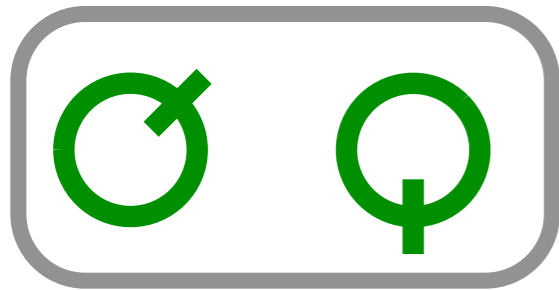
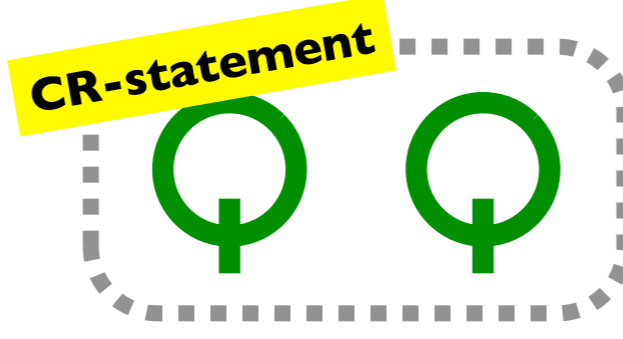
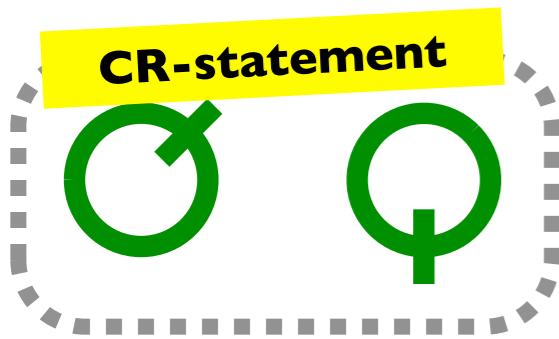
Children's Act - recognition of parenthood



CR-statement



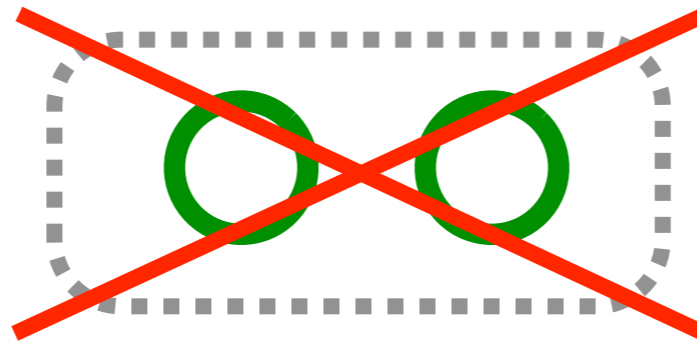
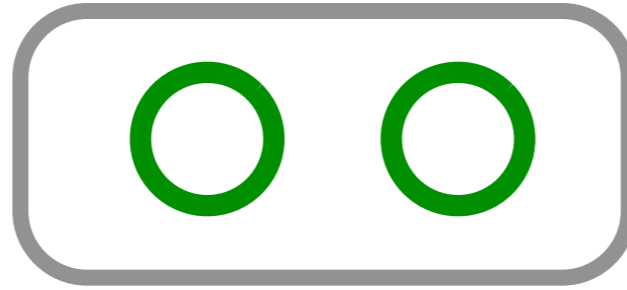
**Only with
paternity statement
or
maternity statement
from
assisted reproduction**



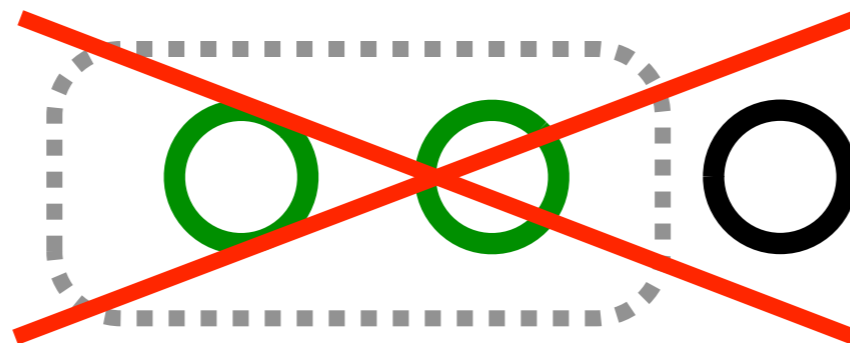
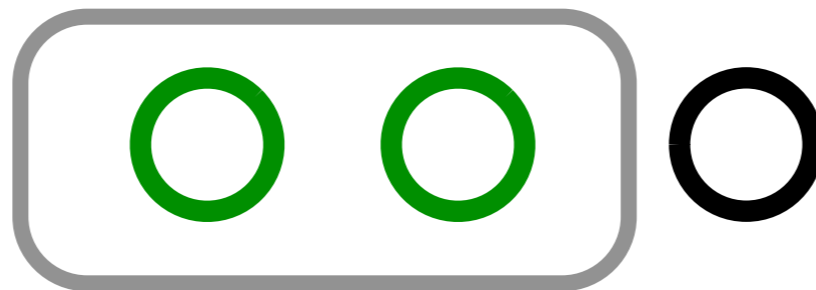
CR-statement

There is one string attached. To apply the rules of recognition the paternity or maternity statements from assisted reproduction are required. This is typically not a big issue as most rainbow families use clinics anyway.

Adoption Act



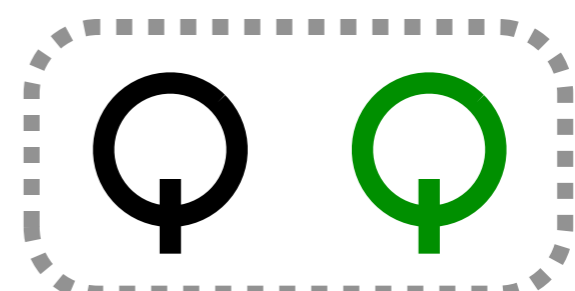
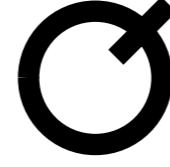
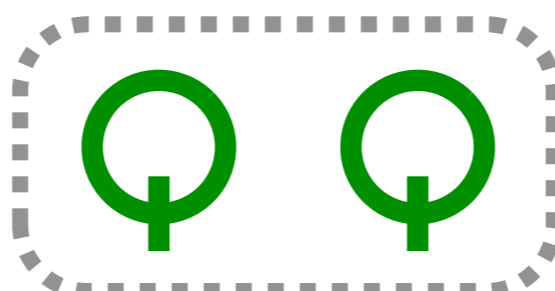
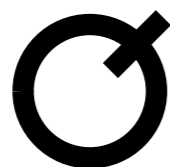
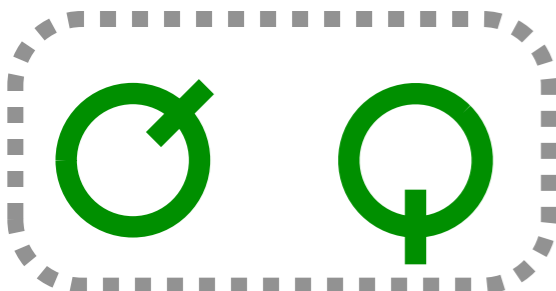
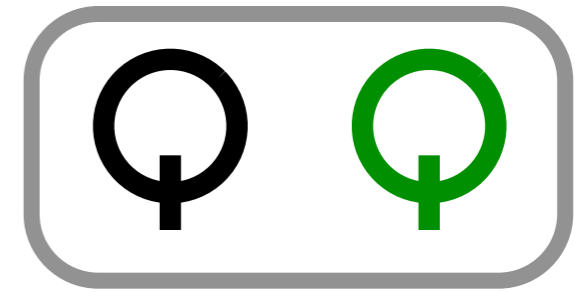
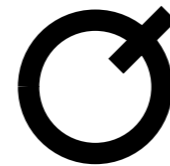
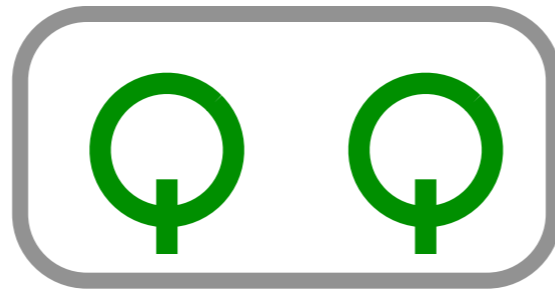
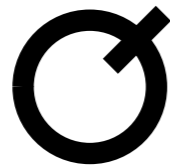
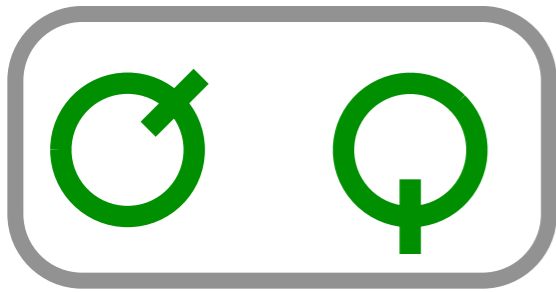
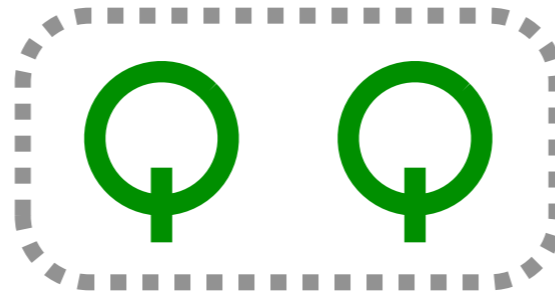
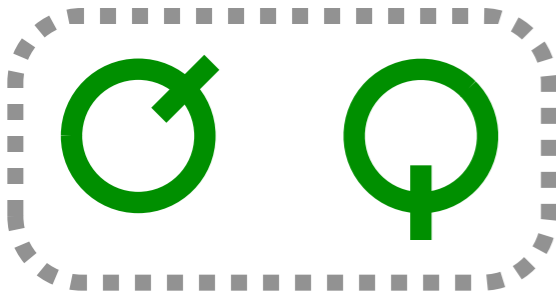
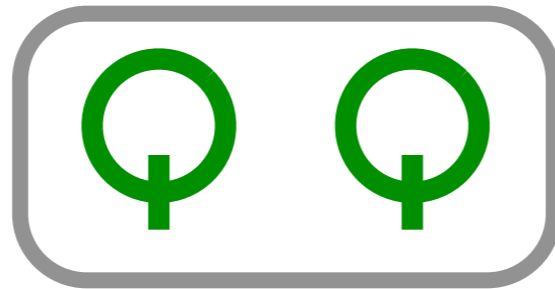
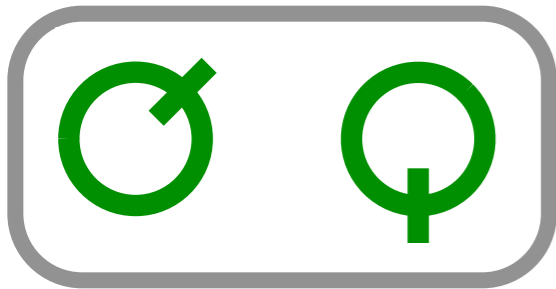
Adoption of
unrelated child



Second parent
adoption

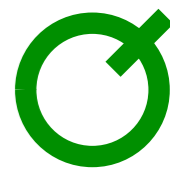
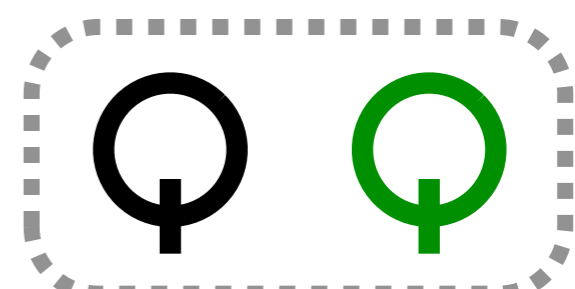
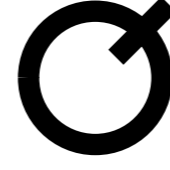
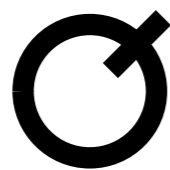
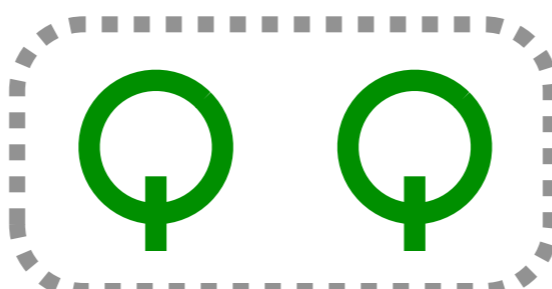
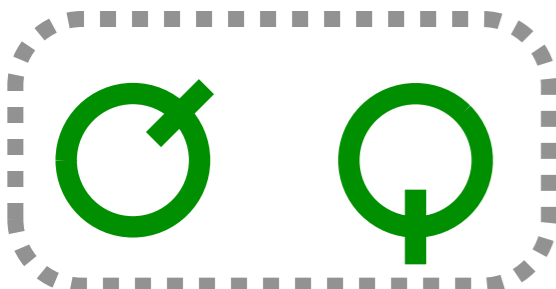
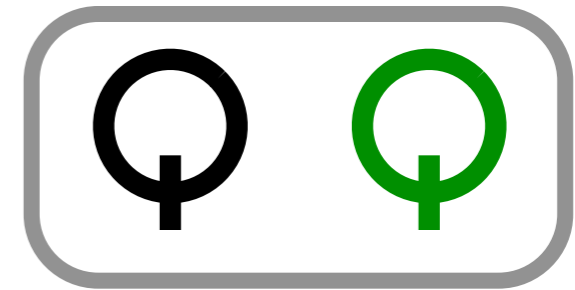
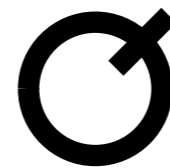
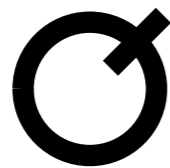
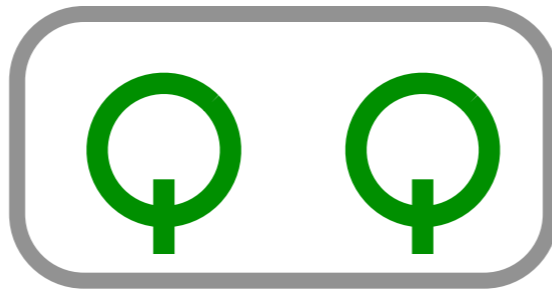
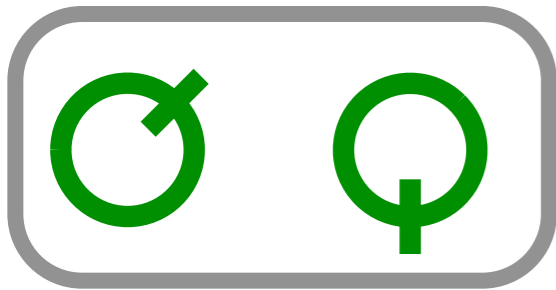
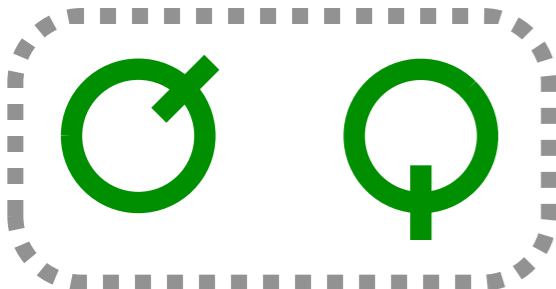
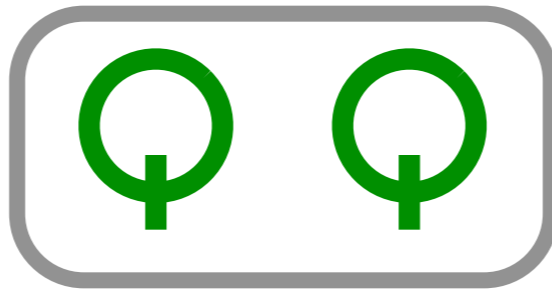
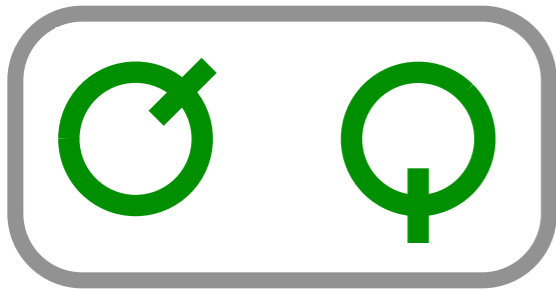
To complete the picture on family law concerning rainbow families this is the situation regarding adoption. The law is completely gender neutral both in the case of second parent adoption and in relation to adoption of an unrelated child. In both cases, however, adoption can take place only within a marriage.

Children's Act



In conclusion, the new law covers a wide variety of family constellations, and it enables the families to plan their structure and recognises this structure even before the child is conceived let alone born.

Children's Act



It didn't come easy, though. In fact the government originally wanted to make a solution exactly like the one used for opposite-sex couples, cf. the boxes. This would be equal treatment. Our organisation, however, fought vigorously against this stating that the existing law (based on second-parent adoption) was preferable to this. The reason is, that we have seen problems before. Before 2002 a man could not start a paternity case. Unfortunately we saw again and again, that (typically) a lesbian couple and a gay man decided to make a family, and he was to be the father. But when the wonderful child was born, the women decided, they would keep it to themselves, thus reducing the man from father to donor. There was no way he could protect his parenthood. If the new law introduced a generalised 'pater est' ('parens est') rule, the man would automatically be deprived his parenthood. This of course was unacceptable.

When the government then wrote the law proposal including the wider range of same-sex families, they did not make these possibilities available to opposite-sex couples – they still wants the 'pater est'-rule – the paternity assumption – to apply for these. Thus for opposite-sex couples paperwork beats biology, but nothing beats marriage. For same-sex couples, paperwork beats biology and paperwork beats marriage.

From the comments to the law text

regarding paternity even if same-sex couple is married

The same possibility is not proposed for opposite-sex couples.

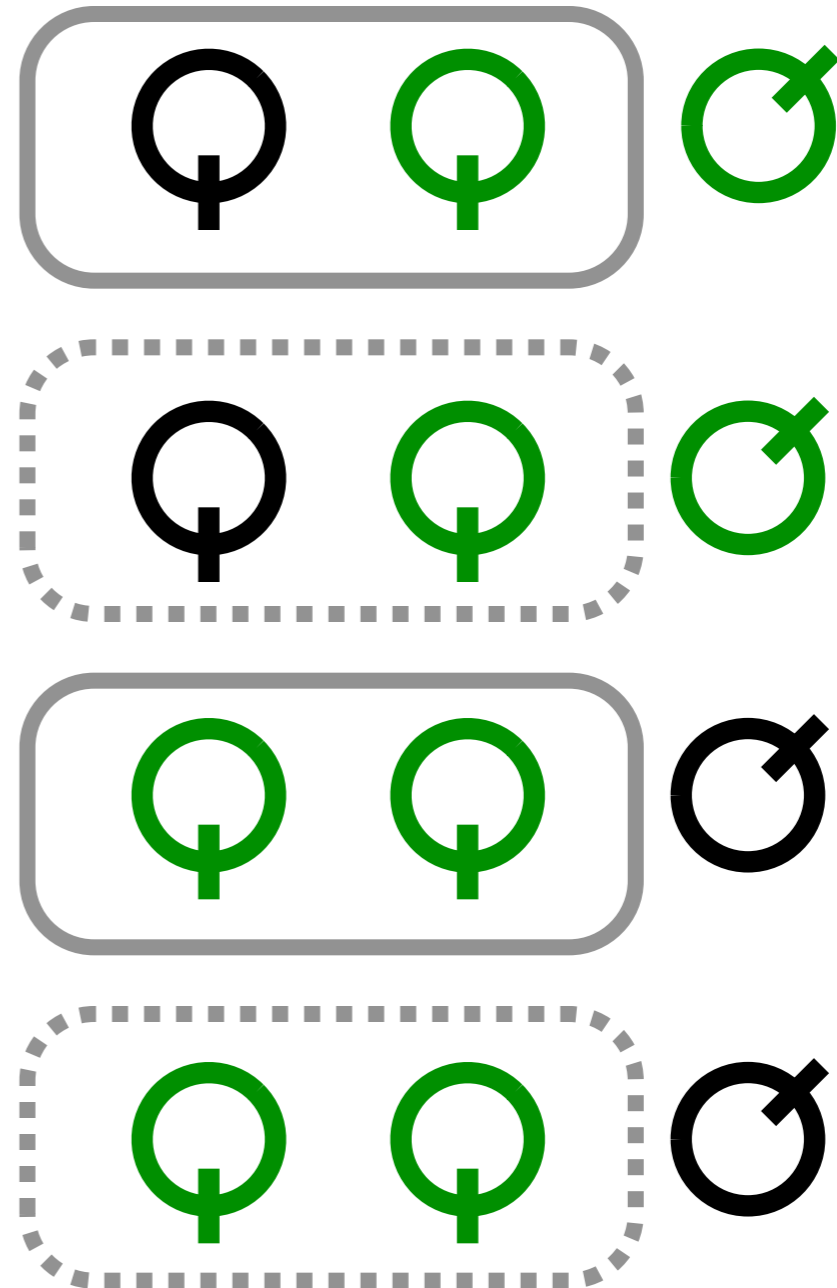
The background for this is, that the government wants to acknowledge, that there is a difference between the situations where same-sex couples and opposite-sex couples decide to use a known donor.

Often there will be different motives, and therefore it is the opinion of the government, that the law should reflect this.

Wish list



Available for
home insemination also

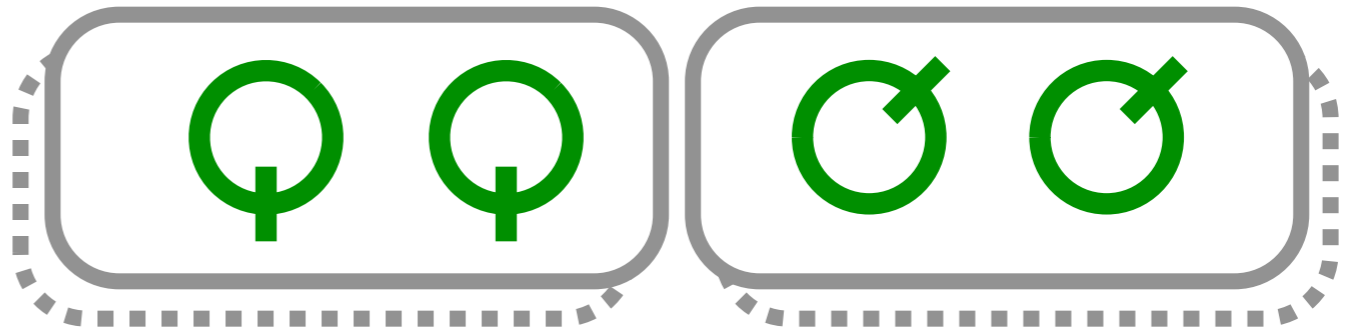
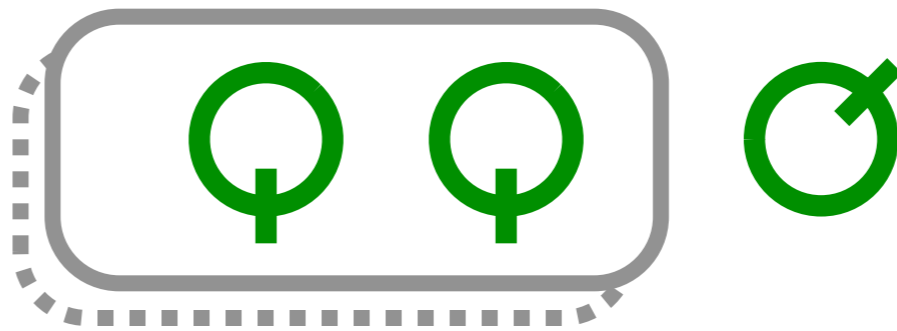


The new law does not mean, that all our wishes are now fulfilled. First, the new solutions should be made available also for home insemination. The reason why the government insisted on using clinics is, that the parties must be advised on the consequences of the law. However, such consultancy could be done elsewhere, e.g. in the state administration, which does consultancy e.g. for couples about to be separated.

Wish list



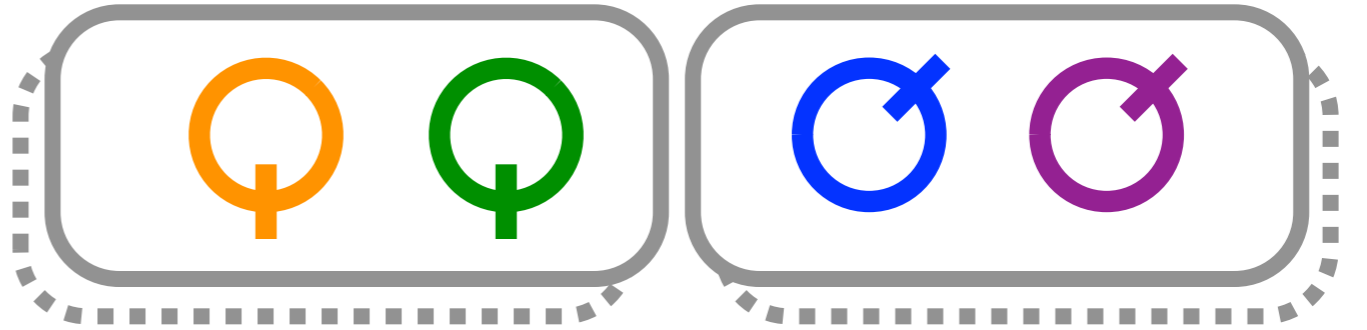
Recognition of more than two parents



More than two parents should be recognised by the law. Often the child has three or four (or even more) parents. If the child considers them equal so should the state. It brings nothing good to create hierarchies among the parents.

Wish list

Differentiation of parenthood

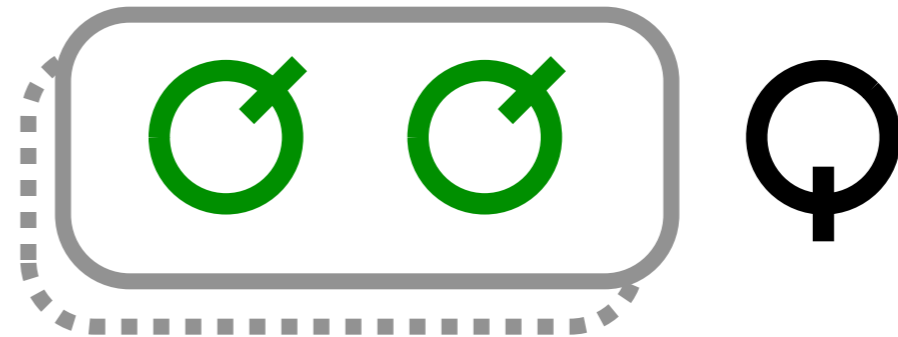


- Lineage
- Care
- Support
- Custody
- Name
- Parental leave
- Inheritance
- Citizenship

There is room for differentiation. Parenthood encompasses a number of areas, e.g. lineage, care of the child, support of the child, custody, from whom the child can get its name, parental leave, inheritance and citizenship of the child. All of these topics need not be bunched together in a one-parenthood fits all solution.

Wish list

Pregnancy donation
(surrogacy)



There should be proper legislation concerning pregnancy donation. I insist using the word 'pregnancy donation' rather than the technical and alienating word 'surrogacy' and the derogatory term 'hatching mother' (Danish: 'rugemor'), which is actually the most widely used term in Denmark. The slide shows only the case of a male couple, but of course all kinds of couples may turn to pregnancy donation.

The unexpected complication

Rule

Men who have sex with men cannot donate:

- blood
- tissue
- sperm

An unexpected complication arose: A rule stated, that a man, who have sex with a man, cannot donate blood, tissue and sperm. We have worked with the question on blood donation for years, but we didn't realise, that the same applied to sperm donation. This, of course, was unacceptable: now the Children's Act is changed to embrace rainbow families, and then gay men are excluded.

The unexpected complication

Rule

Men who have sex with men cannot donate:

- blood
- tissue
- sperm

Consequence

Excessively expensive testing to be payed for by donor

The consequence of the rule was, that if a man, who has sex with men, wanted to be a father or a known donor according to the new rules, he needed massive testing, which is excessively expensive and had to be payed by himself.

We raised the problem politically arguing that the situation should be considered similar to homologous insemination in opposite-sex couples, i.e. inseminationn with a partners sperm. In this case there are no requirements for excessive testing, basically because it is insemination 'within the family'. In rainbow families it is the same story: insemination within the family even if the family has been extended to three persons.

The unexpected complication

Rule

Men who have sex with men cannot donate:

- blood
- tissue
- sperm

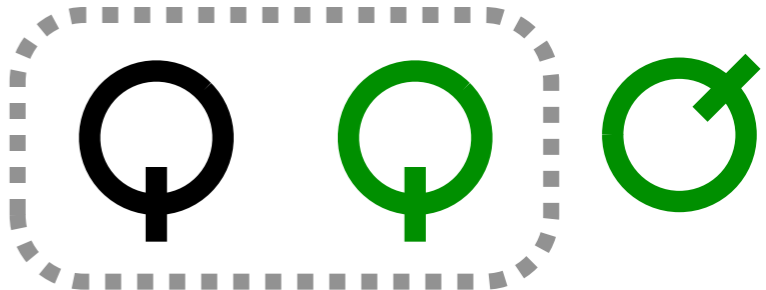
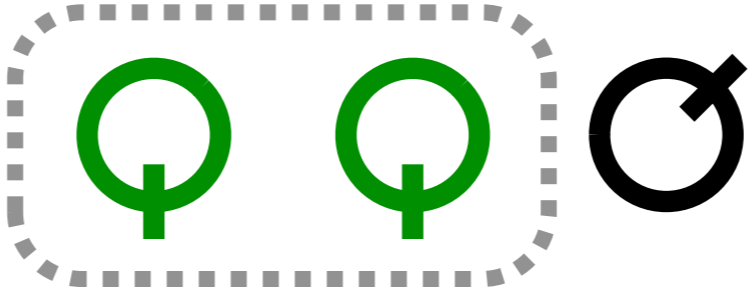
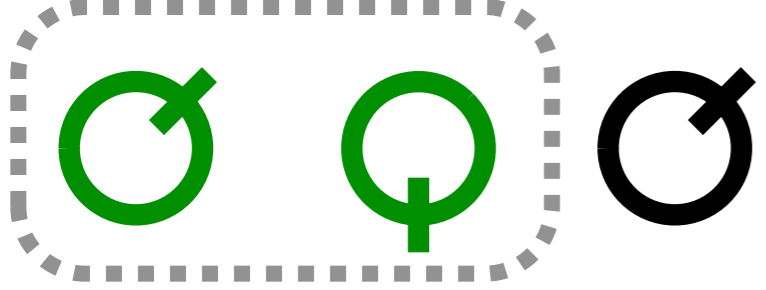
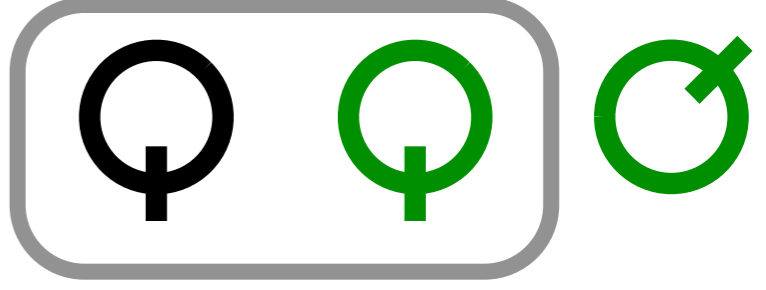
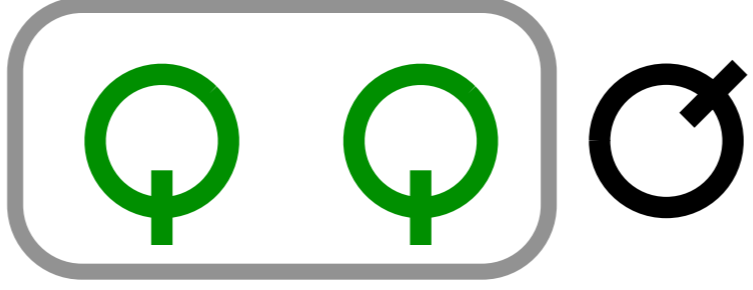
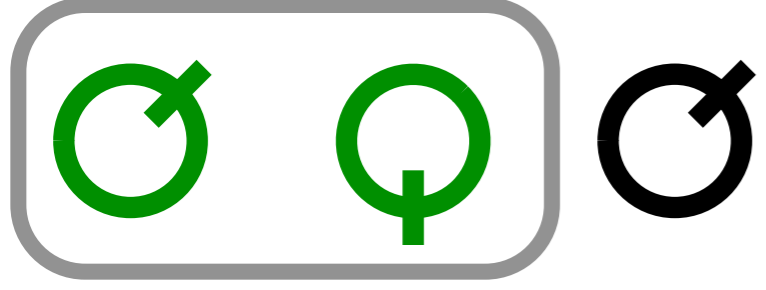
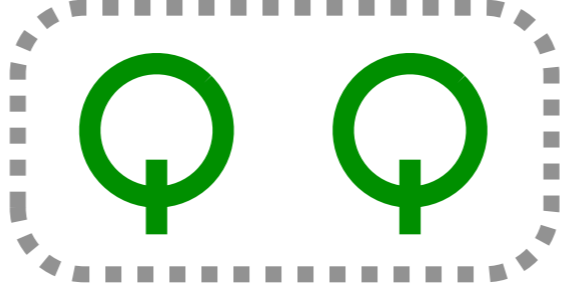
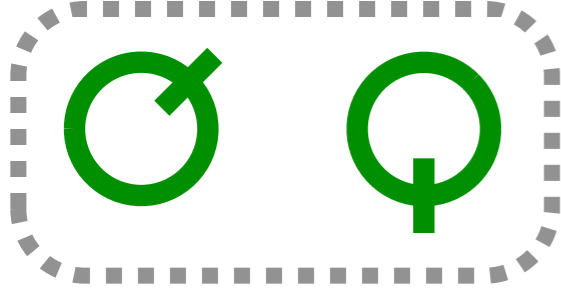
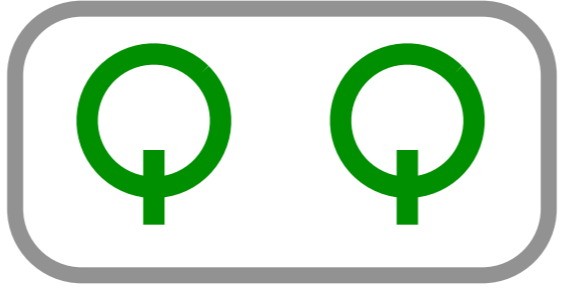
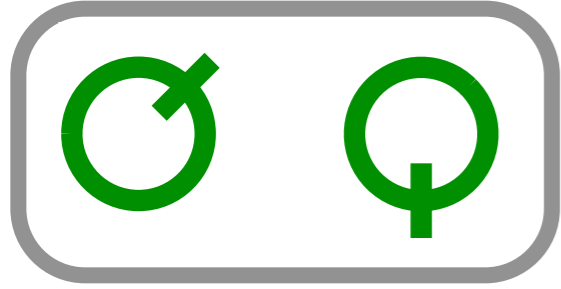
Consequence

Excessively expensive testing to be payed for by donor

Rule changed

Now similar to insemination with partners sperm in opposite-sex couples

Dec. 1, 2013



The revision of Children's Act was passed this spring and it comes into force the first of December. With the new law the children are protected: they get two parents from birth. The parents to be are protected: what they decided when planning the family is recognised by the state. And society is protected: if someone tries to escape his or hers responsibilities, the authorities can sue them and enforce the responsibilities. That is the basis of the Children's Act and that is how it should be - also for our families.

Søren Laursen

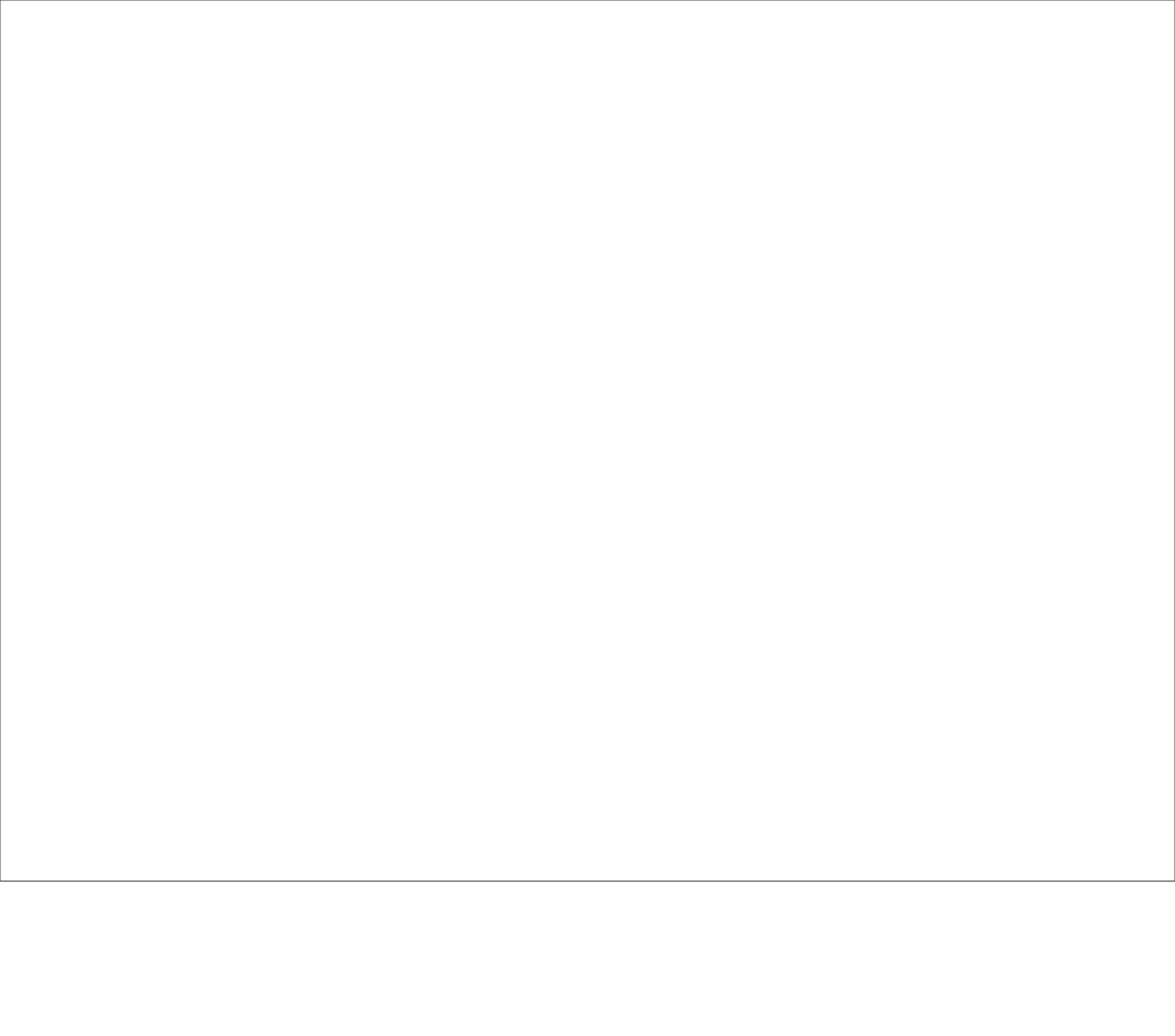
sla@lgbt.dk

www.lgbt.dk

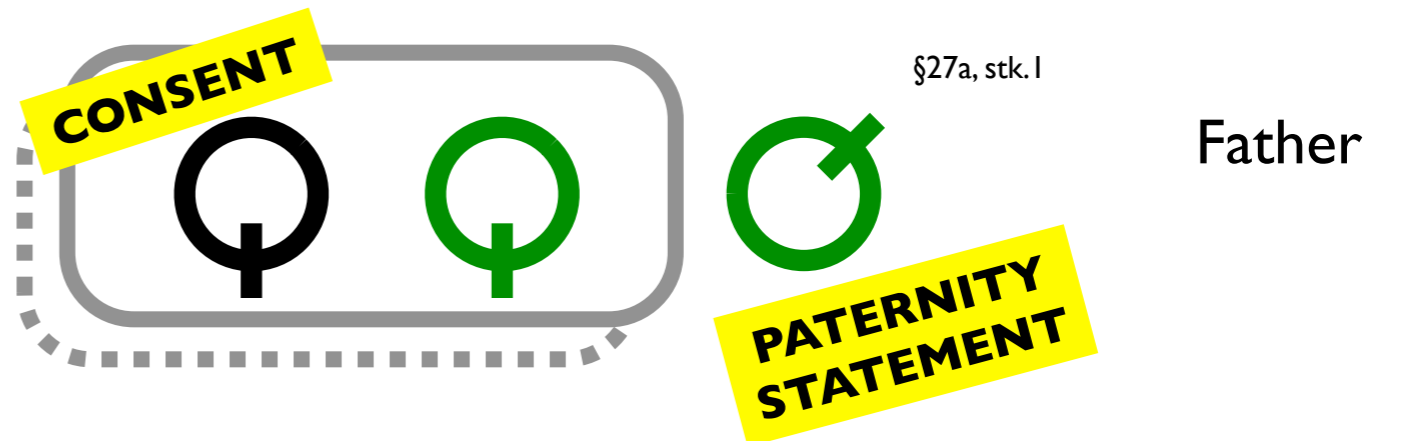
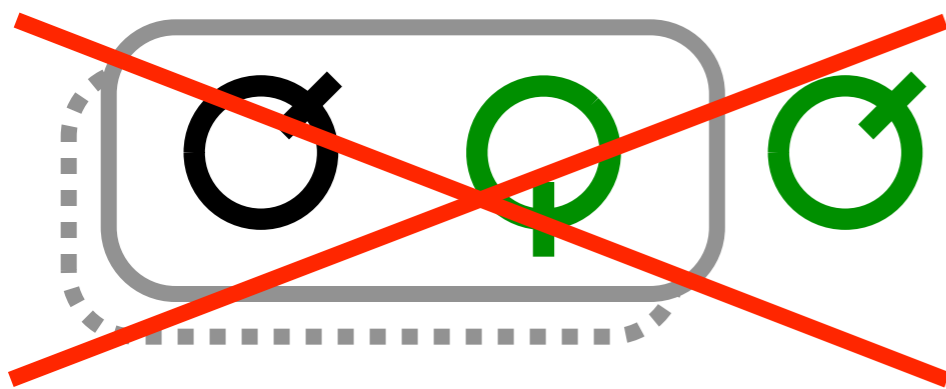
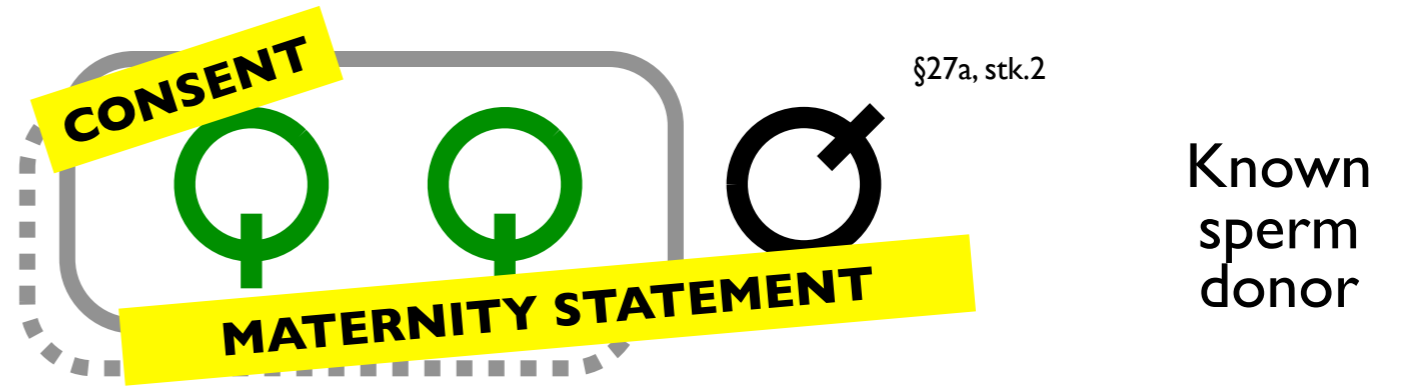
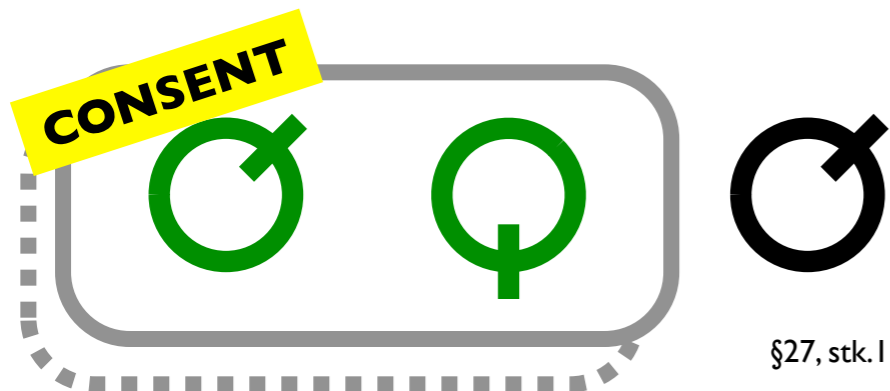
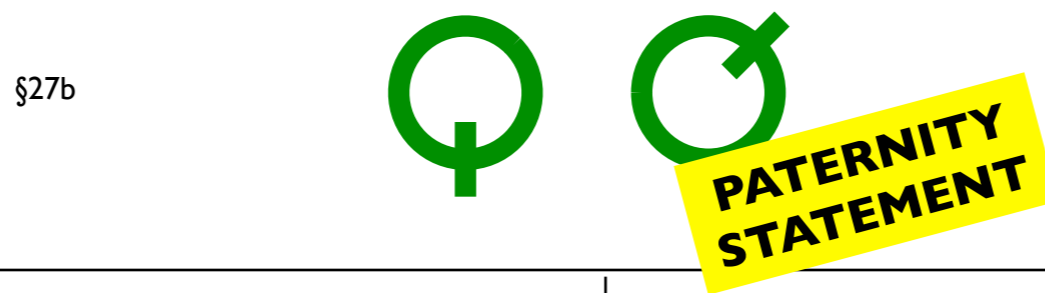
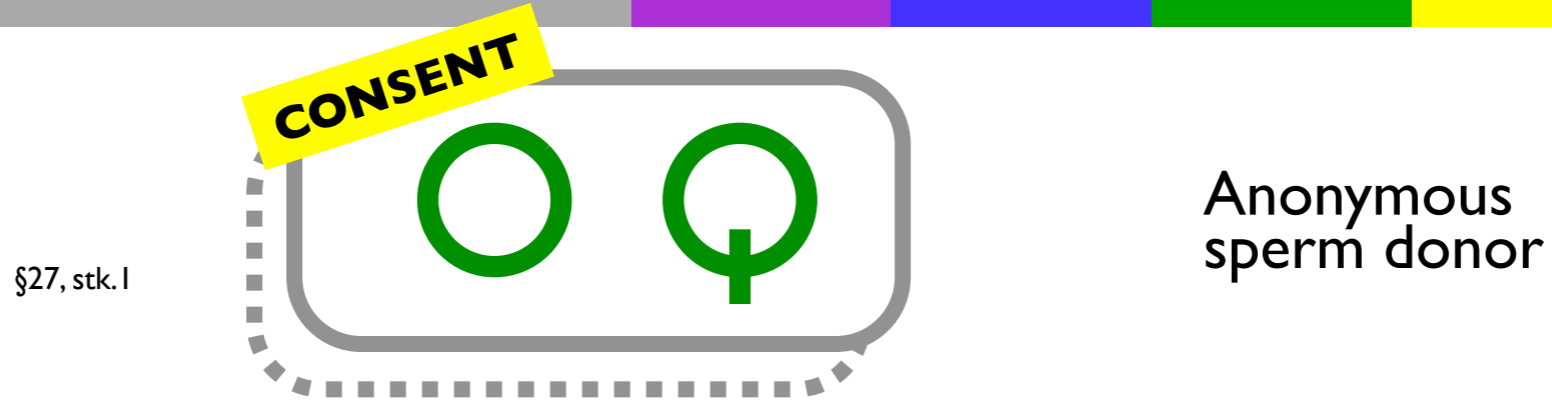
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LGBT DAN
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Children's Act - assisted reproduction



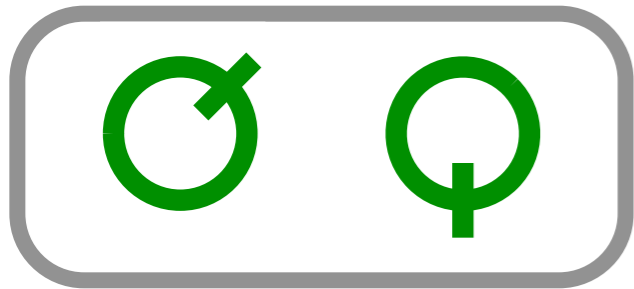
This and the next slide shows which paragraphs of the Children's Act covers each situation.

Children's Act - recognition of parenthood

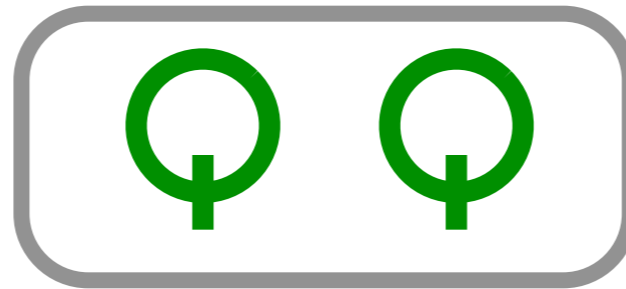


§2, stk.1 or §14, stk.1+§3

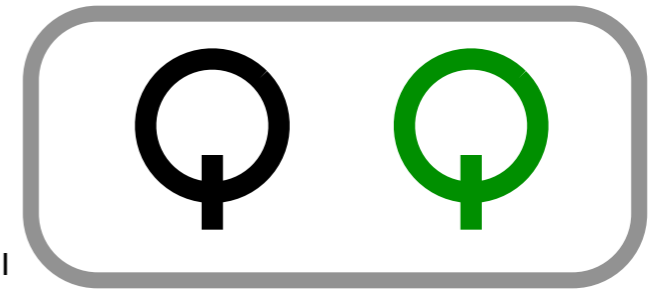
CR-statement



§1, stk.1

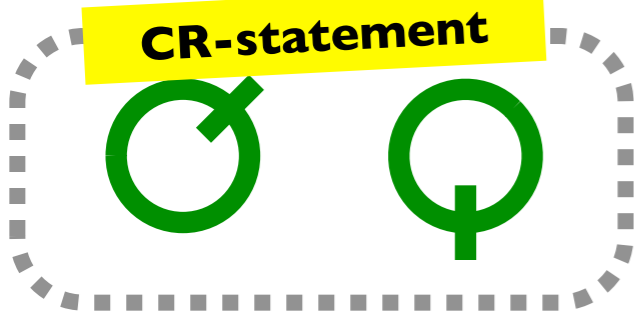


§3a, stk.1



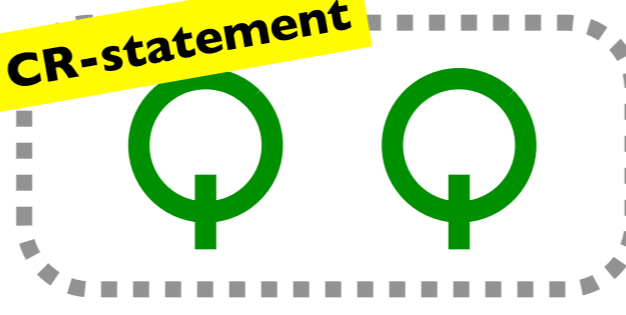
§1a, stk.1
§14, stk.4

CR-statement



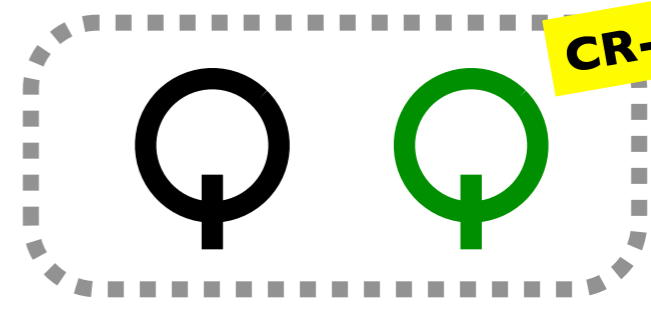
§2, stk.1 or §14, stk.1+§3

CR-statement

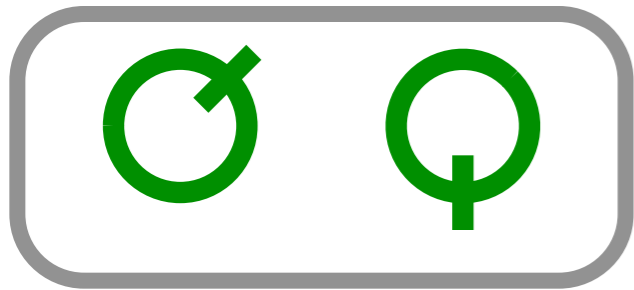


§3b, stk.1 §14, stk.1/5

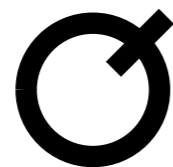
CR-statement



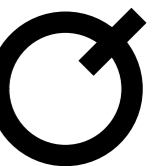
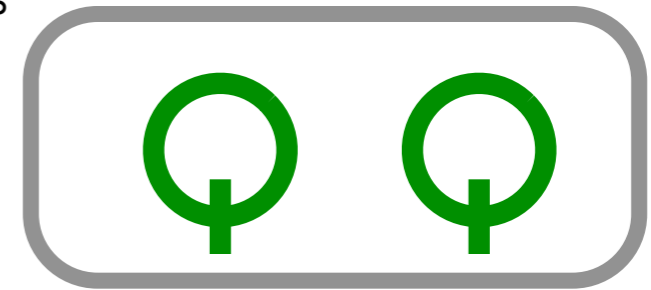
§3 + §14, stk.4



§1, stk.1

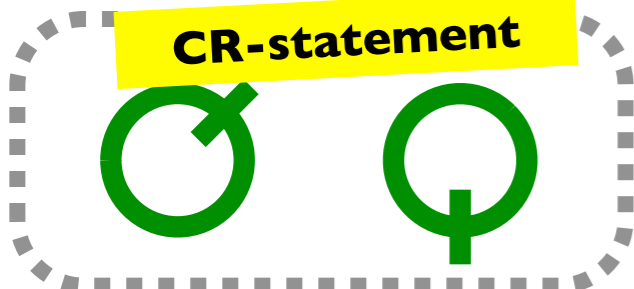


Only with paternity statement or maternity statement from assisted reproduction



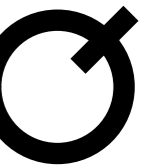
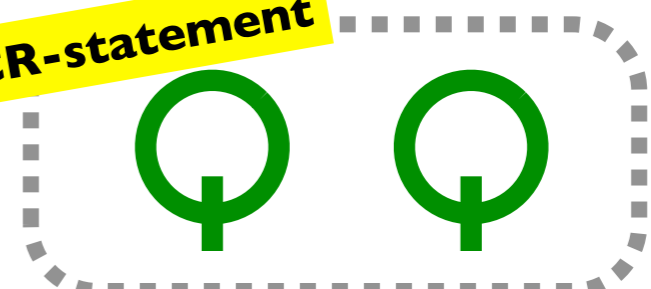
§3a, stk.1
§14, stk.5

CR-statement



§14, stk.3

CR-statement



§14, stk.5