



# Human Fertilisation and Embryology Act 2008

## 2008 CHAPTER 22

### PART 2

#### PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION

##### *Parental orders*

#### **54 Parental orders**

- (1) On an application made by two people (“the applicants”), the court may make an order providing for a child to be treated in law as the child of the applicants if—
  - (a) the child has been carried by a woman who is not one of the applicants, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination,
  - (b) the gametes of at least one of the applicants were used to bring about the creation of the embryo, and
  - (c) the conditions in subsections (2) to (8) are satisfied.
- (2) The applicants must be—
  - (a) husband and wife,
  - (b) civil partners of each other, or
  - (c) two persons who are living as partners in an enduring family relationship and are not within prohibited degrees of relationship in relation to each other.
- (3) Except in a case falling within subsection (11), the applicants must apply for the order during the period of 6 months beginning with the day on which the child is born.
- (4) At the time of the application and the making of the order—
  - (a) the child’s home must be with the applicants, and
  - (b) either or both of the applicants must be domiciled in the United Kingdom or in the Channel Islands or the Isle of Man.

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*Status: This is the original version (as it was originally enacted).*

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- (5) At the time of the making of the order both the applicants must have attained the age of 18.
- (6) The court must be satisfied that both—
- (a) the woman who carried the child, and
  - (b) any other person who is a parent of the child but is not one of the applicants (including any man who is the father by virtue of section 35 or 36 or any woman who is a parent by virtue of section 42 or 43),
- have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.
- (7) Subsection (6) does not require the agreement of a person who cannot be found or is incapable of giving agreement; and the agreement of the woman who carried the child is ineffective for the purpose of that subsection if given by her less than six weeks after the child's birth.
- (8) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by either of the applicants for or in consideration of—
- (a) the making of the order,
  - (b) any agreement required by subsection (6),
  - (c) the handing over of the child to the applicants, or
  - (d) the making of arrangements with a view to the making of the order,
- unless authorised by the court.
- (9) For the purposes of an application under this section—
- (a) in relation to England and Wales, section 92(7) to (10) of, and Part 1 of Schedule 11 to, the Children Act 1989 (c. 41) (jurisdiction of courts) apply for the purposes of this section to determine the meaning of “the court” as they apply for the purposes of that Act and proceedings on the application are to be “family proceedings” for the purposes of that Act,
  - (b) in relation to Scotland, “the court” means the Court of Session or the sheriff court of the sheriffdom within which the child is, and
  - (c) in relation to Northern Ireland, “the court” means the High Court or any county court within whose division the child is.
- (10) Subsection (1)(a) applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.
- (11) An application which—
- (a) relates to a child born before the coming into force of this section, and
  - (b) is made by two persons who, throughout the period applicable under subsection (2) of section 30 of the 1990 Act, were not eligible to apply for an order under that section in relation to the child as husband and wife,
- may be made within the period of six months beginning with the day on which this section comes into force.

## **55 Parental orders: supplementary provision**

- (1) The Secretary of State may by regulations provide—

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- (a) for any provision of the enactments about adoption to have effect, with such modifications (if any) as may be specified in the regulations, in relation to orders under section 54, and applications for such orders, as it has effect in relation to adoption, and applications for adoption orders, and
  - (b) for references in any enactment to adoption, an adopted child or an adoptive relationship to be read (respectively) as references to the effect of an order under section 54, a child to whom such an order applies and a relationship arising by virtue of the enactments about adoption, as applied by the regulations, and for similar expressions in connection with adoption to be read accordingly.
- (2) The regulations may include such incidental or supplemental provision as appears to the Secretary of State to be necessary or desirable in consequence of any provision made by virtue of subsection (1)(a) or (b).
- (3) In this section “the enactments about adoption” means—
- (a) the Adoption (Scotland) Act 1978 (c. 28),
  - (b) the Adoption and Children Act 2002 (c. 38),
  - (c) the Adoption and Children (Scotland) Act 2007 (asp 4), and
  - (d) the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).