



# Human Fertilisation and Embryology Act 1990

## 1990 CHAPTER 37

### *Status*

#### **27 Meaning of “mother”**

- (1) The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child.
- (2) Subsection (1) above does not apply to any child to the extent that the child is treated by virtue of adoption as not being the child of any person other than the adopter or adopters.
- (3) Subsection (1) above 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.

#### **28 Meaning of “father”**

- (1) This section applies in the case of a child who is being or has been carried by a woman as the result of the placing in her of an embryo or of sperm and eggs or her artificial insemination.
- (2) If—
  - (a) at the time of the placing in her of the embryo or the sperm and eggs or of her insemination, the woman was a party to a marriage, and
  - (b) the creation of the embryo carried by her was not brought about with the sperm of the other party to the marriage,then, subject to subsection (5) below, the other party to the marriage shall be treated as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs or to her insemination (as the case may be).
- (3) If no man is treated, by virtue of subsection (2) above, as the father of the child but—

- (a) the embryo or the sperm and eggs were placed in the woman, or she was artificially inseminated, in the course of treatment services provided for her and a man together by a person to whom a licence applies, and
  - (b) the creation of the embryo carried by her was not brought about with the sperm of that man,
- then, subject to subsection (5) below, that man shall be treated as the father of the child.
- (4) Where a person is treated as the father of the child by virtue of subsection (2) or (3) above, no other person is to be treated as the father of the child.
- (5) Subsections (2) and (3) above do not apply—
- (a) in relation to England and Wales and Northern Ireland, to any child who, by virtue of the rules of common law, is treated as the legitimate child of the parties to a marriage,
  - (b) in relation to Scotland, to any child who, by virtue of any enactment or other rule of law, is treated as the child of the parties to a marriage, or
  - (c) to any child to the extent that the child is treated by virtue of adoption as not being the child of any person other than the adopter or adopters.
- (6) Where—
- (a) the sperm of a man who had given such consent as is required by paragraph 5 of Schedule 3 to this Act was used for a purpose for which such consent was required, or
  - (b) the sperm of a man, or any embryo the creation of which was brought about with his sperm, was used after his death,
- he is not to be treated as the father of the child.
- (7) The references in subsection (2) above to the parties to a marriage at the time there referred to—
- (a) are to the parties to a marriage subsisting at that time, unless a judicial separation was then in force, but
  - (b) include the parties to a void marriage if either or both of them reasonably believed at that time that the marriage was valid; and for the purposes of this subsection it shall be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the marriage was valid.
- (8) This section 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.
- (9) In subsection (7)(a) above, “judicial separation” includes a legal separation obtained in a country outside the British Islands and recognised in the United Kingdom.

## **29 Effect of sections 27 and 28**

- (1) Where by virtue of section 27 or 28 of this Act a person is to be treated as the mother or father of a child, that person is to be treated in law as the mother or, as the case may be, father of the child for all purposes.
- (2) Where by virtue of section 27 or 28 of this Act a person is not to be treated as the mother or father of a child, that person is to be treated in law as not being the mother or, as the case may be, father of the child for any purpose.

- (3) Where subsection (1) or (2) above has effect, references to any relationship between two people in any enactment, deed or other instrument or document (whenever passed or made) are to be read accordingly.
- (4) In relation to England and Wales and Northern Ireland, nothing in the provisions of section 27(1) or 28(2) to (4), read with this section, affects—
  - (a) the succession to any dignity or title of honour or renders any person capable of succeeding to or transmitting a right to succeed to any such dignity or title, or
  - (b) the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any dignity or title of honour.
- (5) In relation to Scotland—
  - (a) those provisions do not apply to any title, coat of arms, honour or dignity transmissible on the death of the holder thereof or affect the succession thereto or the devolution thereof, and
  - (b) where the terms of any deed provide that any property or interest in property shall devolve along with a title, coat of arms, honour or dignity, nothing in those provisions shall prevent that property or interest from so devolving.

### **30 Parental orders in favour of gamete donors**

- (1) The court may make an order providing for a child to be treated in law as the child of the parties to a marriage (referred to in this section as “the husband” and “the wife”) if—
  - (a) the child has been carried by a woman other than the wife as the result of the placing in her of an embryo or sperm and eggs or her artificial insemination,
  - (b) the gametes of the husband or the wife, or both, were used to bring about the creation of the embryo, and
  - (c) the conditions in subsections (2) to (7) below are satisfied.
- (2) The husband and the wife must apply for the order within six months of the birth of the child or, in the case of a child born before the coming into force of this Act, within six months of such coming into force.
- (3) At the time of the application and of the making of the order—
  - (a) the child’s home must be with the husband and the wife, and
  - (b) the husband or the wife, of both of them, must be domiciled in a part of the United Kingdom or in the Channel Islands or the Isle of Man.
- (4) At the time of the making of the order both the husband and the wife must have attained the age of eighteen.
- (5) The court must be satisfied that both the father of the child (including a person who is the father by virtue of section 28 of this Act), where he is not the husband, and the woman who carried the child have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.
- (6) Subsection (5) above 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 purposes of that subsection if given by her less than six weeks after the child’s birth.

- (7) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by the husband or the wife for or in consideration of—
- (a) the making of the order,
  - (b) any agreement required by subsection (5) above,
  - (c) the handing over of the child to the husband and the wife, or
  - (d) the making of any arrangements with a view to the making of the order,
- unless authorised by the court.
- (8) For the purposes of an application under this section—
- (a) in relation to England and Wales, section 92(7) to (10) of, and Part I of Schedule 11 to, the Children Act 1989 (jurisdiction of courts) shall 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 shall 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.
- (9) Regulations may provide—
- (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 this section, 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 this section, 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,
- and the regulations may include such incidental or supplemental provision as appears to the Secretary of State necessary or desirable in consequence of any provision made by virtue of paragraph (a) or (b) above.
- (10) In this section “the enactments about adoption” means the Adoption Act 1976, the Adoption (Scotland) Act 1978 and the Adoption (Northern Ireland) Order 1987.
- (11) Subsection (1)(a) above 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.