



# Human Fertilisation and Embryology Act 1990

## 1990 CHAPTER 37

### *Status*

#### **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.
- [<sup>F1</sup>(5) The court must be satisfied that both—
  - (a) the father of the child (including a person who is the father by virtue of section 28 of this Act or section 35 or 36 of the Human Fertilisation and Embryology Act 2008), where he is not the husband, or any woman who is a parent of the child by virtue of section 42 or 43 of that Act, and
  - (b) the woman who carried the child,

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*Status: Point in time view as at 01/09/2009. This version of this provision has been superseded.*

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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 <sup>M1</sup>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 [<sup>F2</sup>Adoption and Children Act 2002]<sup>F2</sup>, the <sup>M2</sup>Adoption (Scotland) Act 1978 and the <sup>M3</sup>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.

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#### Textual Amendments

- F1** S. 30(5) substituted (1.9.2009) by [The Human Fertilisation and Embryology \(Consequential Amendments and Transitional and Saving Provisions\) Order 2009 \(S.I. 2009/1892\)](#), art. 1(1)(a), **Sch. 1 para. 3**
- F2** Words in s. 30(10) substituted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\)](#), ss. 139, 148, **Sch. 3 para. 79** (with [Sch. 4 paras. 6-8](#)); [S.I. 2005/2213](#), **art 2(o)**

#### Modifications etc. (not altering text)

- C1** S. 30(9): transfer of certain functions (1.7.1999) by [S.I. 1999/1750](#), arts. 1(1)(4), 2, **Sch. 1** (with saving in [art. 7](#)).
- C2** S. 30(9)(b) amended (1.12.2003) by [Human Fertilisation and Embryology \(Deceased Fathers\) Act 2003 \(c. 24\)](#), s. 2(1), **Sch. para. 17**; [S.I. 2003/3095](#), **art. 2**

#### Commencement Information

- I1** S. 30 wholly in force; s. 30 not in force at Royal Assent see s. 49(2); s. 30(9)(10) in force at 5.7.1994 and s. 30(1)-(8)(11) in force at 1.11.1994 by [S.I. 1994/1776](#), **art. 2(1)(2)**

#### Marginal Citations

- M1** 1989 c. 41.
- M2** 1978 c. 28.
- M3** [S.I. 1987/2203 \(N.I. 22\)](#).

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