



Human Fertilisation and Embryology Act 2008

2008 CHAPTER 22

PART 2

PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION

Meaning of “mother”

33 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) does not apply to any child to the extent that the child is treated by virtue of adoption as not being the woman's child.
- (3) Subsection (1) 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.

Modifications etc. (not altering text)

- C1** S. 33(2) modified (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), reg. 5, **Sch. 4**
- C2** S. 33(2) modified (21.12.2018) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2018 \(S.I. 2018/1412\)](#), reg. 1(2), **Sch. 4 para. 23**

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Application of sections 35 to 47

34 Application of sections 35 to 47

- (1) Sections 35 to 47 apply, in the case of a child who is being or has been carried by a woman (referred to in those sections as “W”) as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination, to determine who is to be treated as the other parent of the child.
- (2) Subsection (1) has effect subject to the provisions of sections 39, 40 and 46 limiting the purposes for which a person is treated as the child's other parent by virtue of those sections.

Meaning of “father”

35 Woman married [^{F1}to [^{F2}, or civil partner of,] a man] at time of treatment

- (1) If—
 - (a) at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination, W was a party to a marriage [^{F3}with a man][^{F4}or a civil partnership with a man], and
 - (b) the creation of the embryo carried by her was not brought about with the sperm of the other party to the marriage [^{F5}or civil partnership],
 then, subject to section 38(2) to (4), the other party to the marriage [^{F5}or civil partnership] is to 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 artificial insemination (as the case may be).
- (2) This section applies whether W was in the United Kingdom or elsewhere at the time mentioned in subsection (1)(a).

Textual Amendments

- F1** Words in s. 35 heading inserted (E.W.) (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), [Sch. 7 para. 38\(2\)](#); S.I. 2014/93, art. 3(k)(iv); and said words in s. 35 heading also inserted (S.) (16.12.2014) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), [Sch. 5 para. 18\(2\)\(a\)](#); and said words also inserted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), [26\(2\)\(a\)](#)
- F2** Words in s. 35 heading inserted (E.W.S.) (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), regs. 1(2), [16\(2\)\(a\)](#); and said words in s. 35 heading also inserted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), [26\(2\)\(a\)](#)
- F3** Words in s. 35(1)(a) inserted (E.W.) (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), [Sch. 7 para. 38\(3\)](#); S.I. 2014/93, art. 3(k)(iv); and said words in s. 35(1)(a) also inserted (S.) (16.12.2014) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), [Sch. 5 para. 18\(2\)\(b\)](#); and said words in s. 35(1)(a) also inserted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), [26\(2\)\(b\)\(i\)](#) (with regs. 6-9)

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- F4** Words in s. 35(1)(a) inserted (E.W.S.) (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), regs. 1(2), **16(2)(b)(i)**; and said words in s. 35(1)(a) also inserted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(2)(b)(i)** (with regs. 6-9)
- F5** Words in s. 35(1) inserted (E.W.S.) (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), regs. 1(2), **16(2)(b)(ii)**; and said words in s. 35(1) also inserted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(2)(b)(ii)** (with regs. 6-9)

36 Treatment provided to woman where agreed fatherhood conditions apply

If no man is treated by virtue of section 35 as the father of the child and no woman is treated by virtue of section 42 as a parent of the child but—

- (a) the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, in the course of treatment services provided in the United Kingdom by a person to whom a licence applies,
- (b) at the time when the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, the agreed fatherhood conditions (as set out in section 37) were satisfied in relation to a man, in relation to treatment provided to W under the licence,
- (c) the man remained alive at that time, and
- (d) the creation of the embryo carried by W was not brought about with the man's sperm,

then, subject to section 38(2) to (4), the man is to be treated as the father of the child.

37 The agreed fatherhood conditions

- (1) The agreed fatherhood conditions referred to in section 36(b) are met in relation to a man (“M”) in relation to treatment provided to W under a licence if, but only if,—
 - (a) M has given the person responsible a notice stating that he consents to being treated as the father of any child resulting from treatment provided to W under the licence,
 - (b) W has given the person responsible a notice stating that she consents to M being so treated,
 - (c) neither M nor W has, since giving notice under paragraph (a) or (b), given the person responsible notice of the withdrawal of M's or W's consent to M being so treated,
 - (d) W has not, since the giving of the notice under paragraph (b), given the person responsible—
 - (i) a further notice under that paragraph stating that she consents to another man being treated as the father of any resulting child, or
 - (ii) a notice under section 44(1)(b) stating that she consents to a woman being treated as a parent of any resulting child, and
 - (e) W and M are not within prohibited degrees of relationship in relation to each other.
- (2) A notice under subsection (1)(a), (b) or (c) must be in writing and must be signed by the person giving it.
- (3) A notice under subsection (1)(a), (b) or (c) by a person (“S”) who is unable to sign because of illness, injury or physical disability is to be taken to comply with the

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requirement of subsection (2) as to signature if it is signed at the direction of S, in the presence of S and in the presence of at least one witness who attests the signature.

38 Further provision relating to sections 35 and 36

- (1) Where a person is to be treated as the father of the child by virtue of section 35 or 36, no other person is to be treated as the father of the child.
- (2) In England and Wales and Northern Ireland, sections 35 and 36 do not affect any presumption, applying by virtue of the rules of common law [^{F6}or section A1(2) of the Legitimacy Act 1976]^{F7}or section 2(1)(a) of the Family Law Act (Northern Ireland) 2001], that a child is the legitimate child of the parties to a marriage [^{F8}or civil partnership].
- (3) In Scotland, sections 35 and 36 do not apply in relation 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.
- (4) Sections 35 and 36 do not apply to any child to the extent that the child is treated by virtue of adoption as not being the man's child.

Textual Amendments

- F6** Words in s. 38(2) inserted (E.W.S.) (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), regs. 1(2), **16(3)(a)**; and said words in s. 38(2) also inserted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(3)(a)** (with regs. 6-9)
- F7** Words in s. 38(2) inserted (E.W.N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(3)(b)** (with regs. 6-9)
- F8** Words in s. 38(2) inserted (E.W.S.) (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), regs. 1(2), **16(3)(b)**; and said word in s. 38(2) also inserted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(3)(c)** (with regs. 6-9)

Modifications etc. (not altering text)

- C3** S. 38(4) modified (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), reg. 5, **Sch. 4**
- C4** S. 38(4) modified (21.12.2018) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2018 \(S.I. 2018/1412\)](#), reg. 1(2), **Sch. 4 para. 23**

39 Use of sperm, or transfer of embryo, after death of man providing sperm

- (1) If—
 - (a) the child has been carried by W as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination,
 - (b) the creation of the embryo carried by W was brought about by using the sperm of a man after his death, or the creation of the embryo was brought about using the sperm of a man before his death but the embryo was placed in W after his death,
 - (c) the man consented in writing (and did not withdraw the consent)—
 - (i) to the use of his sperm after his death which brought about the creation of the embryo carried by W or (as the case may be) to the placing in

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- W after his death of the embryo which was brought about using his sperm before his death, and
- (ii) to being treated for the purpose mentioned in subsection (3) as the father of any resulting child,
- (d) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the man to be treated for the purpose mentioned in subsection (3) as the father of the child, and
- (e) no-one else is to be treated—
- (i) as the father of the child by virtue of section 35 or 36 or by virtue of section 38(2) or (3), or
- (ii) as a parent of the child by virtue of section 42 or 43 or by virtue of adoption,
- then the man is to be treated for the purpose mentioned in subsection (3) as the father of the child.
- (2) Subsection (1) applies whether W was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination.
- (3) The purpose referred to in subsection (1) is the purpose of enabling the man's particulars to be entered as the particulars of the child's father in a relevant register of births.
- (4) In the application of this section to Scotland, for any reference to a period of 42 days there is substituted a reference to a period of 21 days.

40 Embryo transferred after death of [^{F9} male spouse, civil partner or intended parent] who did not provide sperm

- (1) If—
- (a) the child has been carried by W as a result of the placing in her of an embryo,
- (b) the embryo was created at a time when W was a party to a marriage [^{F10}with a man][^{F11}or a civil partnership with a man],
- (c) the creation of the embryo was not brought about with the sperm of the other party to the marriage [^{F12}or civil partnership],
- (d) the other party to the marriage [^{F13}or civil partnership] died before the placing of the embryo in W,
- (e) the other party to the marriage [^{F14}or civil partnership] consented in writing (and did not withdraw the consent)—
- (i) to the placing of the embryo in W after his death, and
- (ii) to being treated for the purpose mentioned in subsection (4) as the father of any resulting child,
- (f) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the man to be treated for the purpose mentioned in subsection (4) as the father of the child, and
- (g) no-one else is to be treated—
- (i) as the father of the child by virtue of section 35 or 36 or by virtue of section 38(2) or (3), or
- (ii) as a parent of the child by virtue of section 42 or 43 or by virtue of adoption,

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then the man is to be treated for the purpose mentioned in subsection (4) as the father of the child.

(2) If—

- (a) the child has been carried by W as a result of the placing in her of an embryo,
- (b) the embryo was not created at a time when W was a party to a marriage or a civil partnership but was created in the course of treatment services provided to W in the United Kingdom by a person to whom a licence applies,
- (c) a man consented in writing (and did not withdraw the consent)—
 - (i) to the placing of the embryo in W after his death, and
 - (ii) to being treated for the purpose mentioned in subsection (4) as the father of any resulting child,
- (d) the creation of the embryo was not brought about with the sperm of that man,
- (e) the man died before the placing of the embryo in W,
- (f) immediately before the man's death, the agreed fatherhood conditions set out in section 37 were met in relation to the man in relation to treatment proposed to be provided to W in the United Kingdom by a person to whom a licence applies,
- (g) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the man to be treated for the purpose mentioned in subsection (4) as the father of the child, and
- (h) no-one else is to be treated—
 - (i) as the father of the child by virtue of section 35 or 36 or by virtue of section 38(2) or (3), or
 - (ii) as a parent of the child by virtue of section 42 or 43 or by virtue of adoption,

then the man is to be treated for the purpose mentioned in subsection (4) as the father of the child.

- (3) Subsections (1) and (2) apply whether W was in the United Kingdom or elsewhere at the time of the placing in her of the embryo.
- (4) The purpose referred to in subsections (1) and (2) is the purpose of enabling the man's particulars to be entered as the particulars of the child's father in a relevant register of births.
- (5) In the application of this section to Scotland, for any reference to a period of 42 days there is substituted a reference to a period of 21 days.

Textual Amendments

- F9** Words in s. 40 heading substituted (E.W.S.) (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), regs. 1(2), **16(4)(a)**; and said words in s. 40 heading also substituted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(4)(a)** (with regs. 6-9)
- F10** Words in s. 40(1)(b) inserted (E.W.) (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), **Sch. 7 para. 39**; S.I. 2014/93, art. 3(k)(iv); and said words in s. 40(1)(b) also inserted (S.) (16.12.2014) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), **Sch. 5 para. 18(3)**; and said words in s. 40(1)(b) also inserted (N.I.) (13.1.2020) by [The Marriage \(Same-](#)

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- sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **26(4)(b)(i)** (with regs. 6-9)
- F11** Words in s. 40(1)(b) inserted (E.W.S.) (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), regs. 1(2), **16(4)(b)(i)**; and said words in s. 40(1)(b) also inserted (N.I.) (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **26(4)(b)(i)** (with regs. 6-9)
- F12** Words in s. 40(1)(c) inserted (E.W.S.) (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), regs. 1(2), **16(4)(b)(ii)**; and said words in s. 40(1)(c) also inserted (N.I.) (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **26(4)(b)(ii)** (with regs. 6-9)
- F13** Words in s. 40(1)(d) inserted (E.W.S.) (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), regs. 1(2), **16(4)(b)(ii)**; and said words in s. 40(1)(d) also inserted (N.I.) (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **26(4)(b)(ii)** (with regs. 6-9)
- F14** Words in s. 40(1)(e) inserted (E.W.S.) (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), regs. 1(2), **16(4)(b)(ii)**; and said words in s. 40(1)(e) also inserted (N.I.) (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **26(4)(b)(ii)** (with regs. 6-9)

41 Persons not to be treated as father

- (1) Where the sperm of a man who had given such consent as is required by paragraph 5 of Schedule 3 to the 1990 Act (consent to use of gametes for purposes of treatment services or non-medical fertility services) was used for a purpose for which such consent was required, he is not to be treated as the father of the child.
- (2) Where the sperm of a man, or an embryo the creation of which was brought about with his sperm, was used after his death, he is not, subject to section 39, to be treated as the father of the child.
- (3) Subsection (2) applies whether W was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination.

Cases in which woman to be other parent

42 Woman in civil partnership [^{F15}or marriage to a woman] at time of treatment

- (1) If at the time of the placing in her of the embryo or the sperm and eggs or of her artificial insemination, W was a party to a civil partnership [^{F16}with another woman][^{F17}or a marriage with another woman], then subject to section 45(2) to (4), the other party to the civil partnership [^{F18}or marriage] is to be treated as a parent of the child unless it is shown that she did not consent to the placing in W of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).
- (2) This section applies whether W was in the United Kingdom or elsewhere at the time mentioned in subsection (1).

Textual Amendments

- F15** Words in s. 42 heading inserted (E.W.) (13.3.2014) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 7 para. 40(2)**; S.I. 2014/93, art. 3(k)(iv); and said words in s. 42 heading also inserted

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(S.) (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 5 para. 18(4)(a)**; and said words in s. 42 heading also inserted (N.I.) (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **26(5)(a)** (with regs. 6-9)

F16 Words in s. 42(1) inserted (E.W.S.) (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), regs. 1(2), **16(5)**; and said words in s. 42(1) also inserted (N.I.) (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **26(5)(b)(ii)** (with regs. 6-9)

F17 Words in s. 42(1) inserted (E.W.) (13.3.2014) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 7 para. 40(3)(a)**; S.I. 2014/93, art. 3(k)(iv); and said words in s. 42(1) also inserted (S.) (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 5 para. 18(4)(b)(i)**; and said words in s. 42(1) also inserted (N.I.) (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **26(5)(b)(i)** (with regs. 6-9)

F18 Words in s. 42(1) inserted (E.W.) (13.3.2014) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 7 para. 40(3)(b)**; S.I. 2014/93, art. 3(k)(iv) and said words in s. 42(1) also inserted (S.) (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 5 para. 18(4)(b)(ii)**; and said words in s. 42(1) also inserted (N.I.) (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **26(5)(b)(i)** (with regs. 6-9)

43 Treatment provided to woman who agrees that second woman to be parent

If no man is treated by virtue of section 35 as the father of the child and no woman is treated by virtue of section 42 as a parent of the child but—

- (a) the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, in the course of treatment services provided in the United Kingdom by a person to whom a licence applies,
- (b) at the time when the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, the agreed female parenthood conditions (as set out in section 44) were met in relation to another woman, in relation to treatment provided to W under that licence, and
- (c) the other woman remained alive at that time,

then, subject to section 45(2) to (4), the other woman is to be treated as a parent of the child.

44 The agreed female parenthood conditions

(1) The agreed female parenthood conditions referred to in section 43(b) are met in relation to another woman (“P”) in relation to treatment provided to W under a licence if, but only if,—

- (a) P has given the person responsible a notice stating that P consents to P being treated as a parent of any child resulting from treatment provided to W under the licence,
- (b) W has given the person responsible a notice stating that W agrees to P being so treated,

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- (c) neither W nor P has, since giving notice under paragraph (a) or (b), given the person responsible notice of the withdrawal of P's or W's consent to P being so treated,
 - (d) W has not, since the giving of the notice under paragraph (b), given the person responsible—
 - (i) a further notice under that paragraph stating that W consents to a woman other than P being treated as a parent of any resulting child, or
 - (ii) a notice under section 37(1)(b) stating that W consents to a man being treated as the father of any resulting child, and
 - (e) W and P are not within prohibited degrees of relationship in relation to each other.
- (2) A notice under subsection (1)(a), (b) or (c) must be in writing and must be signed by the person giving it.
- (3) A notice under subsection (1)(a), (b) or (c) by a person (“S”) who is unable to sign because of illness, injury or physical disability is to be taken to comply with the requirement of subsection (2) as to signature if it is signed at the direction of S, in the presence of S and in the presence of at least one witness who attests the signature.

45 Further provision relating to sections 42 and 43

- (1) Where a woman is treated by virtue of section 42 or 43 as a parent of the child, no man is to be treated as the father of the child.
- (2) In England and Wales and Northern Ireland, sections 42 and 43 do not affect any presumption, applying by virtue of the rules of common law [^{F19}or section A1(2) of the Legitimacy Act 1976][^{F20}or section 2(1)(a) of the Family Law Act (Northern Ireland) 2001], that a child is the legitimate child of the parties to a marriage [^{F21}or civil partnership].
- (3) In Scotland, sections 42 and 43 do not apply in relation 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.
- (4) Sections 42 and 43 do not apply to any child to the extent that the child is treated by virtue of adoption as not being the woman's child.

Textual Amendments

- F19** Words in s. 45(2) inserted (E.W.S.) (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), regs. 1(2), **16(6)(a)**; and said words in s. 45(2) also inserted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(6)(a)** (with regs. 6-9)
- F20** Words in s. 45(2) inserted (E.W.N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(6)(b)** (with regs. 6-9)
- F21** Words in s. 45(2) inserted (E.W.S.) (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), regs. 1(2), **16(6)(b)**; and said words in s. 45(2) also inserted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(6)(c)** (with regs. 6-9)

Status: Point in time view as at 13/01/2020.

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46 Embryo transferred after death of [^{F22}female spouse, civil partner or intended parent]

(1) If—

- (a) the child has been carried by W as the result of the placing in her of an embryo,
- (b) the embryo was created at a time when W was a party to a civil partnership [^{F23}with a woman or a marriage with a woman],
- (c) the other party to the civil partnership [^{F24}or marriage] died before the placing of the embryo in W,
- (d) the other party to the civil partnership [^{F24}or marriage] consented in writing (and did not withdraw the consent)—
 - (i) to the placing of the embryo in W after the death of the other party, and
 - (ii) to being treated for the purpose mentioned in subsection (4) as the parent of any resulting child,
- (e) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the other party to the civil partnership [^{F25}or marriage] to be treated for the purpose mentioned in subsection (4) as the parent of the child, and
- (f) no one else is to be treated—
 - (i) as the father of the child by virtue of section 35 or 36 or by virtue of section 45(2) or (3), or
 - (ii) as a parent of the child by virtue of section 42 or 43 or by virtue of adoption,

then the other party to the civil partnership [^{F26}or marriage] is to be treated for the purpose mentioned in subsection (4) as a parent of the child.

(2) If—

- (a) the child has been carried by W as the result of the placing in her of an embryo,
- (b) the embryo was not created at a time when W was a party to a marriage or a civil partnership, but was created in the course of treatment services provided to W in the United Kingdom by a person to whom a licence applies,
- (c) another woman consented in writing (and did not withdraw the consent)—
 - (i) to the placing of the embryo in W after the death of the other woman, and
 - (ii) to being treated for the purpose mentioned in subsection (4) as the parent of any resulting child,
- (d) the other woman died before the placing of the embryo in W,
- (e) immediately before the other woman's death, the agreed female parenthood conditions set out in section 44 were met in relation to the other woman in relation to treatment proposed to be provided to W in the United Kingdom by a person to whom a licence applies,
- (f) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the other woman to be treated for the purpose mentioned in subsection (4) as the parent of the child, and
- (g) no one else is to be treated—
 - (i) as the father of the child by virtue of section 35 or 36 or by virtue of section 45(2) or (3), or
 - (ii) as a parent of the child by virtue of section 42 or 43 or by virtue of adoption,

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- then the other woman is to be treated for the purpose mentioned in subsection (4) as a parent of the child.
- (3) Subsections (1) and (2) apply whether W was in the United Kingdom or elsewhere at the time of the placing in her of the embryo.
- (4) The purpose referred to in subsections (1) and (2) is the purpose of enabling the deceased woman's particulars to be entered as the particulars of the child's other parent in a relevant register of births.
- (5) In the application of subsections (1) and (2) to Scotland, for any reference to a period of 42 days there is substituted a reference to a period of 21 days.

Textual Amendments

- F22** Words in s. 46 heading substituted (E.W.S.) (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), regs. 1(2), **16(7)(a)**; and said words in s. 46 heading also substituted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(7)(a)** (with regs. 6-9)
- F23** Words in s. 46(1)(b) substituted (E.W.S.) (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), regs. 1(2), **16(7)(b)**; and said words in s. 46(1)(b) inserted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(7)(b)(i)** (with regs. 6-9)
- F24** Words in s. 46(1)(c)(d) inserted (E.W.) (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), **Sch. 7 para. 41(3)(b)**; S.I. 2014/93, art. 3(k)(iv); S.I. 2014/93, art. 3(k)(iv); and said words in s. 46(1)(c)(d) also inserted (S.) (16.12.2014) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), **Sch. 5 para. 18(5)(c)**; and said words in s. 46(1)(c)(d) also inserted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(7)(b)(ii)** (with regs. 6-9)
- F25** Words in s. 46(1)(e) inserted (E.W.) (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), **Sch. 7 para. 41(3)(b)**; S.I. 2014/93, art. 3(k)(iv); and said words in s. 46(1)(e) also inserted (S.) (16.12.2014) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), **Sch. 5 para. 18(5)(c)**; and said words in s. 46(1)(e) also inserted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(7)(b)(ii)** (with regs. 6-9)
- F26** Words in s. 46(1) inserted (E.W.) (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), **Sch. 7 para. 41(3)(c)**; S.I. 2014/93, art. 3(k)(iv); and said words in s. 46(1) also inserted (S.) (16.12.2014) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), **Sch. 5 para. 18(5)(d)**; and said words in s. 46(1) also inserted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(7)(b)(ii)** (with regs. 6-9)

47 Woman not to be other parent merely because of egg donation

A woman is not to be treated as the parent of a child whom she is not carrying and has not carried, except where she is so treated—

- (a) by virtue of section 42 or 43, or

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- (b) by virtue of section 46 (for the purpose mentioned in subsection (4) of that section), or
- (c) by virtue of adoption.

Effect of sections 33 to 47

48 Effect of sections 33 to 47

- (1) Where by virtue of section 33, 35, 36, 42 or 43 a person is to be treated as the mother, father or parent of a child, that person is to be treated in law as the mother, father or parent (as the case may be) of the child for all purposes.
- (2) Where by virtue of section 33, 38, 41, 45 or 47 a person is not to be treated as a parent of the child, that person is to be treated in law as not being a parent of the child for any purpose.
- (3) Where section 39(1) or 40(1) or (2) applies, the deceased man—
 - (a) is to be treated in law as the father of the child for the purpose mentioned in section 39(3) or 40(4), but
 - (b) is to be treated in law as not being the father of the child for any other purpose.
- (4) Where section 46(1) or (2) applies, the deceased woman—
 - (a) is to be treated in law as a parent of the child for the purpose mentioned in section 46(4), but
 - (b) is to be treated in law as not being a parent of the child for any other purpose.
- (5) Where any of subsections (1) to (4) 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.
- (6) In relation to England and Wales and Northern Ireland, a child who—
 - (a) has a parent by virtue of section 42, or
 - (b) has a parent by virtue of section 43 who is at any time during the period beginning with the time mentioned in section 43(b) and ending with the time of the child's birth a party to a [^{F27}marriage or] civil partnership with the child's mother,
 is the legitimate child of the child's parents.
- (7) In relation to England and Wales and Northern Ireland, nothing in the provisions of section 33(1) or sections 35 to 47, read with this section—
 - (a) affects 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) affects 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.
- (8) In relation to Scotland—
 - (a) those provisions do not apply to any title, coat of arms, honour or dignity transmissible on the death of its holder or affect the succession to any such title, coat of arms or dignity or its devolution, and

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- (b) where the terms of any deed provide that any property or interest in property is to devolve along with a title, coat of arms, honour or dignity, nothing in those provisions is to prevent that property or interest from so devolving.

Textual Amendments

F27 Words in s. 48(6)(b) inserted (E.W.S.) (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), regs. 1(2), **16(8)**; and said words in s. 48(6)(b) also inserted (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(8)** (with regs. 6-9)

References to parties to marriage or civil partnership

49 Meaning of references to parties to a marriage

- (1) The references in sections 35 to 47 to the parties to a marriage at any 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 those sections it is to be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the marriage was valid.
- (2) In subsection (1)(a) “judicial separation” includes a legal separation obtained in a country outside the British Islands and recognised in the United Kingdom.

50 Meaning of references to parties to a civil partnership

- (1) The references in sections 35 to 47 to the parties to a civil partnership at any time there referred to—
- (a) are to the parties to a civil partnership subsisting at that time, unless a separation order was then in force, but
 - (b) include the parties to a void civil partnership if either or both of them reasonably believed at that time that the civil partnership was valid; and for the purposes of those sections it is to be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the civil partnership was valid.
- (2) [^{F28}The reference in section 48(6)(b) to a civil partnership includes a reference to a void civil partnership if either or both of the parties reasonably believed at the time when they registered as civil partners of each other that the civil partnership was valid; and for this purpose it is to be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the civil partnership was valid.]
- (3) In subsection (1)(a), “separation order” means—
- (a) a separation order under section 37(1)(d) or 161(1)(d) of the Civil Partnership Act 2004 (c. 33),
 - (b) a decree of separation under section 120(2) of that Act, or
 - (c) a legal separation obtained in a country outside the United Kingdom and recognised in the United Kingdom.

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Textual Amendments

- F28** S. 50(2) omitted (E.W.) (2.12.2019) by virtue of [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), regs. 1(2), **14(1)** (with reg. 14(2)); and s. 50(2) also omitted (N.I.) (13.1.2020) by virtue of [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **26(9)** (with regs. 6-9, 26(10))

Further provision about registration by virtue of section 39, 40 or 46

51 Meaning of “relevant register of births”

For the purposes of this Part a “relevant register of births”, in relation to a birth, is whichever of the following is relevant—

- (a) a register of live-births or still-births kept under the Births and Deaths Registration Act 1953 (c. 20),
- (b) a register of births or still-births kept under the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49), or
- (c) a register of live-births or still-births kept under the Births and Deaths Registration (Northern Ireland) Order 1976 (S.I. 1976/1041 (N.I. 14)).

52 Late election by mother with consent of Registrar General

- (1) The requirement under section 39(1), 40(1) or (2) or 46(1) or (2) as to the making of an election (which requires an election to be made either on or before the day on which the child was born or within the period of 42 or, as the case may be, 21 days from that day) is nevertheless to be treated as satisfied if the required election is made after the end of that period but with the consent of the Registrar General under subsection (2).
- (2) The Registrar General may at any time consent to the making of an election after the end of the period mentioned in subsection (1) if, on an application made to him in accordance with such requirements as he may specify, he is satisfied that there is a compelling reason for giving his consent to the making of such an election.
- (3) In this section “the Registrar General” means the Registrar General for England and Wales, the Registrar General of Births, Deaths and Marriages for Scotland or (as the case may be) the Registrar General for Northern Ireland.

Interpretation of references to father etc. where woman is other parent

53 Interpretation of references to father etc.

- (1) Subsections (2) and (3) have effect, subject to subsections (4) and (6), for the interpretation of any enactment, deed or any other instrument or document (whenever passed or made).
- (2) Any reference (however expressed) to the father of a child who has a parent by virtue of section 42 or 43 is to be read as a reference to the woman who is a parent of the child by virtue of that section.

Status: Point in time view as at 13/01/2020.

Changes to legislation: Human Fertilisation and Embryology Act 2008, Part 2 is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) Any reference (however expressed) to evidence of paternity is, in relation to a woman who is a parent by virtue of section 42 or 43, to be read as a reference to evidence of parentage.
- (4) This section does not affect the interpretation of the enactments specified in subsection (5) (which make express provision for the case where a child has a parent by virtue of section 42 or 43).
- (5) Those enactments are—
 - (a) the Legitimacy Act (Northern Ireland) 1928 (c. 5 (N.I.)),
 - (b) the Schedule to the Population (Statistics) Act 1938 (c. 12),
 - (c) the Births and Deaths Registration Act 1953 (c. 20),
 - (d) the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 (c. 58),
 - (e) Part 2 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49),
 - (f) the Congenital Disabilities (Civil Liability) Act 1976 (c. 28),
 - (g) the Legitimacy Act 1976 (c. 31),
 - (h) the Births and Deaths Registration (Northern Ireland) Order 1976 (S.I. 1976/1041 (N.I. 14)),
 - (i) the British Nationality Act 1981 (c. 61),
 - (j) the Family Law Reform Act 1987 (c. 42),
 - (k) Parts 1 and 2 of the Children Act 1989 (c. 41),
 - (l) Part 1 of the Children (Scotland) Act 1995 (c. 36),
 - (m) section 1 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39), and
 - (n) Parts 2, 3 and 14 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).
- (6) This section does not affect the interpretation of references that fall to be read in accordance with section 1(2)(a) or (b) of the Family Law Reform Act 1987 or Article 155(2)(a) or (b) of the Children (Northern Ireland) Order 1995 (references to a person whose father and mother were, or were not, married to each other at the time of the person's birth).

Parental orders

54 Parental orders^[F29]: two applicants

- (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 ^[F30](8A) are satisfied.
- (2) The applicants must be—
 - (a) husband and wife,

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- (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.
- (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.
- [^{F31}(8A) An order relating to the child must not previously have been made under this section or section 54A, unless the order has been quashed or an appeal against the order has been allowed.]
- (9) For the purposes of an application under this section—
- (a) in relation to England and Wales [^{F32}—
 - (i) “the court” means the High Court or the family court, and
 - (ii) proceedings on the application are to be “family proceedings” for the purposes of the Children Act 1989,]
 - (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 ^{F33}....

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- (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.

Textual Amendments

- F29** Words in s. 54 heading inserted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), arts. 1(1), 2(2)
- F30** Word in s. 54(1)(c) substituted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), arts. 1(1), 2(3)
- F31** S. 54(8A) inserted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), arts. 1(1), 2(4)
- F32** Words in s. 54(9)(a) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 206](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F33** Words in s. 54(9)(c) repealed (N.I.) (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), s. 106(2), [Sch. 1 para. 134](#), [Sch. 9 Pt. 1](#) (with [Sch. 8 para. 1](#)); [S.R. 2016/387](#), art. 2(k)(m) (with art. 3)

Modifications etc. (not altering text)

- C5** S. 54: power to modify conferred (6.4.2010) by [Human Fertilisation and Embryology Act 1990 \(c. 37\)](#), s. 35A (as inserted by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), [ss. 26, 68](#)); [S.I. 2010/987](#), [art. 2\(b\)](#)
- C6** S. 54 applied (with modifications) (29.10.2015) by [The Human Fertilisation and Embryology \(Mitochondrial Donation\) Regulations 2015 \(S.I. 2015/572\)](#), regs. 1, 18

Commencement Information

- I1** S. 54 wholly in force at 6.4.2010; s. 54 not in force at Royal assent see s. 68; s. 54 in force for certain purposes at 6.4.2009 by [S.I. 2009/479](#), [art. 5\(h\)](#) (with [Sch.](#)); s. 54 in force for certain further purposes at 1.10.2009 by [S.I. 2009/2232](#), [art. 2\(q\)](#); s. 54 in force at 6.4.2010 otherwise by [S.I. 2010/987](#), [art. 2\(c\)](#)

[^{F34}54A Parental orders: one applicant

- (1) On an application made by one person (“the applicant”), the court may make an order providing for a child to be treated in law as the child of the applicant if—
- (a) the child has been carried by a woman who is not the applicant, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination,
 - (b) the gametes of the applicant were used to bring about the creation of the embryo, and
 - (c) the conditions in subsections (2) to (8) are satisfied.

Status: Point in time view as at 13/01/2020.

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- (2) Except in a case falling within subsection (11), the applicant must apply for the order within the period of 6 months beginning with the day on which the child is born.
- (3) At the time of the application and the making of the order—
 - (a) the child’s home must be with the applicant, and
 - (b) the applicant must be domiciled in the United Kingdom or in the Channel Islands or the Isle of Man.
- (4) At the time of the making of the order the applicant must have attained the age of 18.
- (5) 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 the applicant (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.
- (6) Subsection (5) 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.
- (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 applicant for or in consideration of—
 - (a) the making of the order,
 - (b) any agreement required by subsection (5),
 - (c) the handing over of the child to the applicant, or
 - (d) the making of arrangements with a view to the making of the order,
 unless authorised by the court.
- (8) An order relating to the child must not previously have been made under section 54 or this section, unless the order has been quashed or an appeal against the order has been allowed.
- (9) Section 54(9) applies for the purposes of an application under this section.
- (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 relates to a child born before the coming into force of this section may be made within the period of six months beginning with the day on which this section comes into force.]

Textual Amendments

F34 S. 54A inserted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), arts. 1(1), 2(5)

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Modifications etc. (not altering text)

- C7 S. 54A applied (with modifications) by S.I. 2015/572, reg. 18A (as inserted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018](#) (S.I. 2018/1413), art. 1(1), [Sch. 2 para. 14](#))

55 Parental orders: supplementary provision

- (1) The Secretary of State may by regulations 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 section 54 [^{F35}or 54A], 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 [^{F36}or 54A], 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)).

Textual Amendments

- F35 Words in s. 55(1)(a) inserted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018](#) (S.I. 2018/1413), arts. 1(1), [2\(6\)](#)
- F36 Words in s. 55(1)(b) inserted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018](#) (S.I. 2018/1413), arts. 1(1), [2\(6\)](#)

Amendments of enactments

56 Amendments relating to parenthood in cases involving assisted reproduction

Schedule 6 contains amendments related to the provisions of this Part.

Commencement Information

- I2 S. 56 wholly in force at 6.4.2010; s. 56 not in force at Royal Assent see s. 68; s. 56 in force for certain purposes at 6.4.2009 and for further certain purposes at 1.9.2009 by [S.I. 2009/479](#), [art. 6\(1\)\(f\)](#){(2)}; s. 56 in force at 6.4.2010 otherwise by [S.I. 2010/987](#), [art. 2\(d\)](#)

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General

57 Repeals and transitional provision relating to Part 2

- (1) Sections 33 to 48 have effect only in relation to children carried by women as a result of the placing in them of embryos or of sperm and eggs, or their artificial insemination (as the case may be), after the commencement of those sections.
- (2) Sections 27 to 29 of the 1990 Act (which relate to status) do not have effect in relation to children carried by women as a result of the placing in them of embryos or of sperm and eggs, or their artificial insemination (as the case may be), after the commencement of sections 33 to 48.
- (3) Section 30 of the 1990 Act (parental orders in favour of gamete donors) ceases to have effect.
- (4) Subsection (3) does not affect the validity of any order made under section 30 of the 1990 Act before the coming into force of that subsection.

Commencement Information

- I3** S. 57 wholly in force at 6.4.2010; s. 57 not in force at Royal Assent see s. 68; s. 57(1)(2) in force at 6.4.2009 by S.I. 2009/479, art. 6(b) (with Sch.); s. 57 in force at 6.4.2010 otherwise by S.I. 2010/987, art. 2(e)

58 Interpretation of Part 2

- (1) In this Part “enactment” means an enactment contained in, or in an instrument made under—
 - (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) a Measure or Act of the National Assembly for Wales, or
 - (d) Northern Ireland legislation.
- (2) For the purposes of this Part, two persons are within prohibited degrees of relationship if one is the other's parent, grandparent, sister, brother, aunt or uncle; and in this subsection references to relationships—
 - (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would subsist but for adoption, and
 - (b) include the relationship of a child with his adoptive, or former adoptive, parents,
 but do not include any other adoptive relationships.
- (3) Other expressions used in this Part and in the 1990 Act have the same meaning in this Part as in that Act.

Commencement Information

- I4** S. 58 partly in force; s. 58 not in force at Royal assent see s. 68; s. 58 in force for certain purposes at 6.4.2009 by S.I. 2009/479, art. 5(h) (with Sch.)

Status:

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Changes to legislation:

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