



# Human Fertilisation and Embryology Act 2008

## 2008 CHAPTER 22

### PART 2

#### PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION

##### *Cases in which woman to be other parent*

#### **42 Woman in civil partnership [<sup>F1</sup>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 [<sup>F2</sup>with another woman][<sup>F3</sup>or a marriage with another woman], then subject to section 45(2) to (4), the other party to the civil partnership [<sup>F4</sup>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**

- F1** 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 (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)
- F2** 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.)

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- (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)
- F3** 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)
- F4** 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,
  - (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

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- (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 [<sup>F5</sup>or section A1(2) of the Legitimacy Act 1976][<sup>F6</sup>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 [<sup>F7</sup>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**

- F5** 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)
- F6** 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)
- F7** 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)

#### **46 Embryo transferred after death of [<sup>F8</sup>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 [<sup>F9</sup>with a woman or a marriage with a woman],

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- (c) the other party to the civil partnership [<sup>F10</sup>or marriage] died before the placing of the embryo in W,
- (d) the other party to the civil partnership [<sup>F10</sup>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 [<sup>F11</sup>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 [<sup>F12</sup>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,

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.

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- (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

- F8** 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)
- F9** 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)
- F10** 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)
- F11** 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)
- F12** 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
- (b) by virtue of section 46 (for the purpose mentioned in subsection (4) of that section), or
- (c) by virtue of adoption.

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