



Human Fertilisation and Embryology Act 2008

2008 CHAPTER 22

PART 2

PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION

Meaning of “father”

40 Embryo transferred after death of [^{F1}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 [^{F2}with a man][^{F3}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 [^{F4}or civil partnership],
- (d) the other party to the marriage [^{F5}or civil partnership] died before the placing of the embryo in W,
- (e) the other party to the marriage [^{F6}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

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(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.

(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

- F1** 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)
- F2** 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](#)

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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-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)

- F3** 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)
- F4** 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)
- F5** 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)
- F6** 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)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 55(3)(e) and word inserted by [2022 c. 18 \(N.I.\) Sch. 3 para. 75\(b\)](#)