



Human Fertilisation and Embryology Act 1990

1990 CHAPTER 37

Status

28 Meaning of “father”.

- (1) [^{F1}Subject to subsections (5A) to (5I) below,] 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—

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- (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 [^{F2}man's child].

[^{F3}(5A) If—

- (a) a child 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,
- (b) the creation of the embryo carried by her 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 the woman after his death,
- (c) the woman was a party to a marriage with the man immediately before his death,
- (d) 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 the woman or (as the case maybe) to the placing in the woman 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 (5I) below as the father of any resulting child,
- (e) the woman 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 (5I) below as the father of the child, and
- (f) no-one else is to be treated as the father of the child by virtue of subsection (2) or (3) above or by virtue of adoption or the child being treated as mentioned in paragraph (a) or (b) of subsection (5) above,

then the man shall be treated for the purpose mentioned in subsection (5I) below as the father of the child.

(5B) If—

- (a) a child 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,
- (b) the creation of the embryo carried by her 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 the woman after his death,
- (c) the woman was not a party to a marriage with the man immediately before his death but treatment services were being provided for the woman and the man together before his death either by a person to whom a licence applies or outside the United Kingdom,
- (d) 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 the woman or (as the case maybe) to the placing in the woman after his death of the embryo which was brought about using his sperm before his death, and

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- (ii) to being treated for the purpose mentioned in subsection (5I) below as the father of any resulting child,
- (e) the woman 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 (5I) below as the father of the child, and
- (f) no-one else is to be treated as the father of the child by virtue of subsection (2) or (3) above or by virtue of adoption or the child being treated as mentioned in paragraph (a) or (b) of subsection (5) above,

then the man shall be treated for the purpose mentioned in subsection (5I) below as the father of the child.

(5C) If—

- (a) a child has been carried by a woman as the result of the placing in her of an embryo,
- (b) the embryo was created at a time when the woman was a party to a marriage,
- (c) the creation of the embryo was not brought about with the sperm of the other party to the marriage,
- (d) the other party to the marriage died before the placing of the embryo in the woman,
- (e) the other party to the marriage consented in writing (and did not withdraw the consent)—
 - (i) to the placing of the embryo in the woman after his death, and
 - (ii) to being treated for the purpose mentioned in subsection (5I) below as the father of any resulting child,
- (f) the woman 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 marriage to be treated for the purpose mentioned in subsection (5I) below as the father of the child, and
- (g) no-one else is to be treated as the father of the child by virtue of subsection (2) or (3) above or by virtue of adoption or the child being treated as mentioned in paragraph (a) or (b) of subsection (5) above,

then the other party to the marriage shall be treated for the purpose mentioned in subsection (5I) below as the father of the child.

(5D) If—

- (a) a child has been carried by a woman as the result of the placing in her of an embryo,
- (b) the embryo was not created at a time when the woman was a party to a marriage but was created in the course of treatment services provided for the woman and a man together either by a person to whom a licence applies or outside the United Kingdom,
- (c) the creation of the embryo was not brought about with the sperm of that man,
- (d) the man died before the placing of the embryo in the woman,
- (e) the man consented in writing (and did not withdraw the consent)—
 - (i) to the placing of the embryo in the woman after his death, and
 - (ii) to being treated for the purpose mentioned in subsection (5I) below as the father of any resulting child,
- (f) the woman 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 (5I) below as the father of the child, and

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- (g) no-one else is to be treated as the father of the child by virtue of subsection (2) or (3) above or by virtue of adoption or the child being treated as mentioned in paragraph (a) or (b) of subsection (5) above,
then the man shall be treated for the purpose mentioned in subsection (5I) below as the father of the child.
- (5E) In the application of subsections (5A) to (5D) above to Scotland, for any reference to a period of 42 days there shall be substituted a reference to a period of 21 days.
- (5F) The requirement under subsection (5A), (5B), (5C) or (5D) above 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) shall nevertheless 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 (5G) below.
- (5G) The Registrar General may at any time consent to the making of an election after the end of the period mentioned in subsection (5F) above 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.
- (5H) In subsections (5F) and (5G) above “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 maybe) the Registrar General for Northern Ireland.
- (5I) The purpose referred to in subsections (5A) to (5D) above is the purpose of enabling the man’s particulars to be entered as the particulars of the child’s father in (as the case may be) a register of live-births or still-births kept under the Births and Deaths Registration Act 1953 or the Births and Deaths Registration (Northern Ireland) Order 1976 or a register of births or still-births kept under the Registration of Births, Deaths and Marriages (Scotland) Act 1965.]
- (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 [^{F4}, subject to subsections (5A) and (5B) above,] to be treated as the father of the child.
- (7) The references in subsection (2) above [^{F5}and subsections (5A) to (5D) 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.

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(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.

Textual Amendments

- F1** Words in s. 28(1) inserted (1.12.2003) by [Human Fertilisation and Embryology \(Deceased Fathers\) Act 2003 \(c. 24\), s. 2\(1\)](#), {Sch. para. 13}); S.I. 2003/3095, [art. 2](#)
- F2** Words in s. 28(5)(c) substituted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\), ss. 139, 148, Sch. 3 para. 78](#) (with [Sch. 4 paras. 6-8](#)); S.I. 2005/2213, [art. 2\(o\)](#)
- F3** S. 28(5A)-(5I) inserted (1.12.2003) by [Human Fertilisation and Embryology \(Deceased Fathers\) Act 2003 \(c. 24\), s. 1\(1\)](#) (with s. 31(1)-(6)); S.I. 2003/3095, [art. 2](#)
- F4** Words in s. 28(6)(b) inserted (1.12.2003) by [Human Fertilisation and Embryology \(Deceased Fathers\) Act 2003 \(c. 24\), s. 2\(1\)](#), [Sch. para. 14](#); S.I. 2003/3095, [art. 2](#)
- F5** Words in s. 28(7) inserted (1.12.2003) by [Human Fertilisation and Embryology \(Deceased Fathers\) Act 2003 \(c. 24\), s. 2\(1\)](#), [Sch. para. 15](#); S.I. 2003/3095, [art. 2](#)

Modifications etc. (not altering text)

- C1** S. 28 modified (1.12.2003) by [Human Fertilisation and Embryology \(Deceased Fathers\) Act 2003 \(c. 24\), s. 3\(2\)-\(6\)](#); S.I. 2003/3095, [art. 2](#)
- C2** Ss. 27-29 excluded (6.4.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\), ss. 57\(2\), 68\(2\)](#); S.I. 2009/479, [art. 6\(1\)\(b\)](#) (with [art. 7Sch.](#))
- C3** S. 28(5)(c) modified (1.11.1994) by S.I. 1994/2804, [reg. 3](#), [Sch. 2 para. 6](#)
- C4** S. 28(5)(c) modified (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\), regs. 1\(1\), 5](#), [Sch. 4](#)
- C5** S. 28(5)(c) modified (21.12.2018) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2018 \(S.I. 2018/1412\), reg. 1\(2\)](#), [Sch. 4 para. 16](#)

Commencement Information

- I1** S. 28 wholly in force at 1.8.1991 see s. 49(2) and S.I. 1991/1400, [art. 2\(2\)](#)

Changes to legislation:

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