

These notes refer to the Human Fertilisation and Embryology Act 2008 (c.22) which received Royal Assent on 13 November 2008

HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Parenthood in Cases Involving Assisted Reproduction

Section 38: Further provisions relating to sections 35 and 36

175. **Section 38(1)** provides that where a person is treated as a child's father under the preceding sections, no other person is to be treated as the father. A sperm donor, for example, would not have this status. Sections 38(2) and (3) provides that sections 35 and 36 do not affect the common law presumption that a child is the legitimate child of the parties to a marriage. If, for example, a woman marries between the conception of the donor-conceived child and its birth, it will be presumed that her new husband is the father of the child, even if the agreed fatherhood conditions were satisfied in relation to a different man at the time when the gametes or embryo were transferred. This presumption may, however, be rebutted by evidence (for example a DNA test) showing that the husband is not in fact the child's father. In that case, the provisions of section 36 would apply and the man in respect of whom the agreed fatherhood conditions were satisfied would be the child's father. There is no parallel presumption in common law for people who enter a civil partnership. So the provisions which would otherwise apply to determine parenthood will not be affected by the mother entering into a civil partnership after the transfer of an embryo or gametes.