



Human Fertilisation and Embryology Act 2008

2008 CHAPTER 22

PART 2

PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION

Meaning of “father”

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 [^{F1}or section A1(2) of the Legitimacy Act 1976]^{F2}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 [^{F3}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 [^{F4}or civil partnership].
- (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

- F1** 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)

Changes to legislation: *Human Fertilisation and Embryology Act 2008, Section 38 is up to date with all changes known to be in force on or before 21 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) View outstanding changes*

- F2** 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)
- F3** 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. 3892) 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)
- F4** Words in s. 38(3) inserted (27.1.2022) by [The Civil Partnership \(Scotland\) Act 2020](#) and [Marriage and Civil Partnership \(Scotland\) Act 2014 \(Consequential Modifications\) Order 2022 \(S.I. 2022/74\)](#), art. 1, **Sch. 1 para. 2(2)**

Modifications etc. (not altering text)

- C1** 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**
- C2** 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**

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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\(b\)](#)