



# 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*

- 46 Embryo transferred after death of [<sup>F1</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>F2</sup>with a woman or a marriage with a woman],
  - (c) the other party to the civil partnership [<sup>F3</sup>or marriage] died before the placing of the embryo in W,
  - (d) the other party to the civil partnership [<sup>F3</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>F4</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

*Changes to legislation: Human Fertilisation and Embryology Act 2008, Section 46 is up to date with all changes known to be in force on or before 20 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*

(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>F5</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.
- (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

- F1** 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)
- F2** 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.)

**Changes to legislation:** Human Fertilisation and Embryology Act 2008, Section 46 is up to date with all changes known to be in force on or before 20 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

- (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)
- F3** 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)
- F4** 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)
- F5** 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)

**Changes to legislation:**

Human Fertilisation and Embryology Act 2008, Section 46 is up to date with all changes known to be in force on or before 20 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.

[View outstanding changes](#)

**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\(b\)](#)