



# Human Fertilisation and Embryology Act 1990

## 1990 CHAPTER 37

### *Offences*

#### **41 Offences.**

(1) A person who—

- (a) contravenes section 3(2)<sup>[F1]</sup>, 3A] or <sup>[F2]</sup>4A(1) or (2)] of this Act, or
- (b) does anything which, by virtue of section 3(3) of this Act, cannot be authorised by a licence,

is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding ten years or a fine or both.

(2) A person who—

- (a) contravenes section 3(1) <sup>[F3]</sup>or (1A)] of this Act, otherwise than by doing something which, by virtue of section 3(3) of this Act, cannot be authorised by a licence,
- <sup>[F4]</sup>(aa) contravenes section 3(1B) of this Act,
- (b) keeps <sup>F5</sup>... any gametes in contravention of section 4(1)(a) <sup>F5</sup>... of this Act,
- <sup>[F6]</sup>(ba) uses any gametes in contravention of section 4(1)(b),]
- <sup>[F7]</sup>(bb) contravenes section 4(1A) of this Act,
- (c) contravenes section 4(3) of this Act, or
- (d) fails to comply with any directions given by virtue of <sup>[F8]</sup>section 24(5D)] of this Act,

is guilty of an offence.

<sup>F9</sup>(2A) .....

(3) If a person—

- (a) provides any information for the purposes of the grant of a licence, being information which is false or misleading in a material particular, and

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- (b) either he knows the information to be false or misleading in a material particular or he provides the information recklessly,  
he is guilty of an offence.
- (4) A person guilty of an offence under subsection (2) or (3) above <sup>F10</sup>... is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- <sup>F11</sup>(4A) .....
- <sup>F12</sup>(4B) .....
- (5) A person who discloses any information in contravention of [<sup>F13</sup>section 33A] of this Act is guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- <sup>F14</sup>(6) .....
- (7) A person who without reasonable excuse fails to comply with a requirement imposed by regulations made by virtue of [<sup>F15</sup>section 19B(3)(a) or 20B(3)(e)] of this Act is guilty of an offence.
- (8) Where a person to whom a licence applies [<sup>F16</sup>or the holder of the licence] gives or receives any money or other benefit, not authorised by directions, in respect of any supply of gametes [<sup>F17</sup>, embryos or human admixed embryos], he is guilty of an offence.
- (9) A person guilty of an offence under subsection <sup>F18</sup>... (7) or (8) above is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level five on the standard scale or both.
- <sup>F19</sup>(10) It is a defence for a person (“the defendant”) charged with an offence of doing anything which, under section 3(1) or (1A), 4(1) or 4A(2), cannot be done except in pursuance of a licence to prove—
- (a) that the defendant was acting under the direction of another, and
  - (b) that the defendant believed on reasonable grounds—
    - (i) that the other person was at the material time the person responsible under a licence, a person designated by virtue of section 17(2)(b) of this Act as a person to whom a licence applied, or a person to whom directions had been given under section 24(5A) to (5D), and
    - (ii) that the defendant was authorised by virtue of the licence or directions to do the thing in question.
- (10A) It is a defence for a person (“the defendant”) charged with an offence of doing anything which, under section 3(1A) or (1B) or 4(1A), cannot be done except in pursuance of a licence or a third party agreement to prove—
- (a) that the defendant was acting under the direction of another, and
  - (b) that the defendant believed on reasonable grounds—
    - (i) that the other person was at the material time the person responsible under a licence, a person designated by virtue of section 17(2)(b) of

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this Act as a person to whom a licence applied, a person to whom a third party agreement applied, or a person to whom directions had been given under section 24(5A) to (5D), and

(ii) that the defendant was authorised by virtue of the licence, third party agreement or directions to do the thing in question.]

- (11) It is a defence for a person charged with an offence under this Act to prove—
- (a) that at the material time he was a person to whom a licence [<sup>F20</sup>or third party agreement] applied or to whom directions had been given, and
  - (b) that he took all such steps as were reasonable and exercised all due diligence to avoid committing the offence.

#### Textual Amendments

- F1** Words in s. 41(1)(a) inserted (10.4.1995) by 1994 c. 33, s. 156(3); S.I. 1995/721, art. 2, Sch.
- F2** Words in s. 41(1)(a) substituted (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(2), 68(2); S.I. 2009/2232, art. 2(n)
- F3** Words in s. 41(2)(a) inserted (25.5.2007 for certain purposes, otherwise 5.7.2007) by The Human Fertilisation and Embryology (Quality and Safety) Regulations 2007 (S.I. 2007/1522), regs 1, 27(2)
- F4** S. 41(2)(aa) inserted (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(3)(a), 68(2) (with s. 29(11)); S.I. 2009/2232, art. 2(n)
- F5** Words in s. 41(2)(b) omitted (25.5.2007 for certain purposes, otherwise 5.7.2007) by virtue of The Human Fertilisation and Embryology (Quality and Safety) Regulations 2007 (S.I. 2007/1522), regs 1, 27(3)
- F6** S. 41(2)(ba) inserted (25.5.2007 for certain purposes, otherwise 5.7.2007) by The Human Fertilisation and Embryology (Quality and Safety) Regulations 2007 (S.I. 2007/1522), regs 1, 27(4)
- F7** S. 41(2)(bb) inserted (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(3)(b), 68(2) (with s. 29(11)); S.I. 2009/2232, art. 2(n)
- F8** Words in s. 41(2)(d) substituted (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(3)(c), 68(2) (with s. 29(11)); S.I. 2009/2232, art. 2(n)
- F9** S. 41(2A) repealed (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(10), 68(2), Sch. 8 Pt. 1; S.I. 2009/2232, art. 2(n)
- F10** Words in s. 41(4) repealed (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(4), 68(2), Sch. 8 Pt. 1; S.I. 2009/2232, art. 2(n)
- F11** S. 41(4A) repealed (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(10), 68(2), Sch. 8 Pt. 1; S.I. 2009/2232, art. 2(n)
- F12** S. 41(4B) repealed (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(10), 68(2), Sch. 8 Pt. 1; S.I. 2009/2232, art. 2(n)
- F13** Words in s. 41(5) substituted (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(5), 68(2); S.I. 2009/2232, art. 2(n)
- F14** S. 41(6) repealed (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(10), 68(2), Sch. 8 Pt. 1; S.I. 2009/2232, art. 2(n)
- F15** Words in s. 41(7) substituted (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(6), 68(2); S.I. 2009/2232, art. 2(n)
- F16** Words in s. 41(8) substituted (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(7)(a), 68(2); S.I. 2009/2232, art. 2(n)
- F17** Words in s. 41(8) substituted (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(7)(b), 68(2); S.I. 2009/2232, art. 2(n)
- F18** Word in s. 41(9) repealed (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(8), 68(2), Sch. 8 Pt. 1; S.I. 2009/2232, art. 2(n)
- F19** S. 41(10)(10A) substituted for s.41(10) (1.10.2009) by Human Fertilisation and Embryology Act 2008 (c. 22), ss. 29(9), 68(2); S.I. 2009/2232, art. 2(n)

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**F20** Words in s. 41(11)(a) inserted (25.5.2007 for certain purposes, otherwise 5.7.2007) by [The Human Fertilisation and Embryology \(Quality and Safety\) Regulations 2007 \(S.I. 2007/1522\)](#), regs 1, **27(8)**

**Commencement Information**

**I1** S. 41 wholly in force; s. 41 not in force at Royal Assent see s. 49(2); s. 41(3)(4) in force 8.7.1991 and the remaining provisions in force 1.8.1991 see S.I. 1990/2165 and [S.I. 1991/1400](#), **art. 2(1)(d)(e)(2)**

**42 Consent to prosecution.**

No proceedings for an offence under this Act shall be instituted—

- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions, and
- (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

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