



# Human Fertilisation and Embryology Act 2008

## 2008 CHAPTER 22

An Act to amend the Human Fertilisation and Embryology Act 1990 and the Surrogacy Arrangements Act 1985; to make provision about the persons who in certain circumstances are to be treated in law as the parents of a child; and for connected purposes. [13th November 2008]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

VALID FROM 06/04/2009

### PART 1

#### AMENDMENTS OF THE HUMAN FERTILISATION AND EMBRYOLOGY ACT 1990

VALID FROM 01/10/2009

#### *Principal terms used in the 1990 Act*

#### **1** Meaning of “embryo” and “gamete”

- (1) Section 1 of the 1990 Act (meaning of “embryo”, “gamete” and associated expressions) is amended as follows.
- (2) For subsection (1) substitute—

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**Changes to legislation:** Human Fertilisation and Embryology Act 2008 is up to date with all changes known to be in force on or before 12 March 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)

“(1) In this Act (except in section 4A or in the term “human admixed embryo”)

- (a) embryo means a live human embryo and does not include a human admixed embryo (as defined by section 4A(6)), and
- (b) references to an embryo include an egg that is in the process of fertilisation or is undergoing any other process capable of resulting in an embryo.”

(3) In subsection (2), for paragraph (a) substitute—

- “(a) references to embryos the creation of which was brought about *in vitro* (in their application to those where fertilisation or any other process by which an embryo is created is complete) are to those where fertilisation or any other process by which the embryo was created began outside the human body whether or not it was completed there, and”.

(4) For subsection (4) substitute—

“(4) In this Act (except in section 4A)—

- (a) references to eggs are to live human eggs, including cells of the female germ line at any stage of maturity, but (except in subsection (1)(b)) not including eggs that are in the process of fertilisation or are undergoing any other process capable of resulting in an embryo,
- (b) references to sperm are to live human sperm, including cells of the male germ line at any stage of maturity, and
- (c) references to gametes are to be read accordingly.”

(5) After subsection (5) insert—

“(6) If it appears to the Secretary of State necessary or desirable to do so in the light of developments in science or medicine, regulations may provide that in this Act (except in section 4A) “embryo”, “eggs”, “sperm” or “gametes” includes things specified in the regulations which would not otherwise fall within the definition.

(7) Regulations made by virtue of subsection (6) may not provide for anything containing any nuclear or mitochondrial DNA that is not human to be treated as an embryo or as eggs, sperm or gametes.”

## 2 **Meaning of “nuclear DNA”**

In section 2(1) of the 1990 Act (other terms), after the definition of “non-medical fertility services” insert—

““nuclear DNA”, in relation to an embryo, includes DNA in the pronucleus of the embryo.”.

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VALID FROM 01/10/2009

### *Activities governed by the 1990 Act*

## **3 Prohibitions in connection with embryos**

- (1) Section 3 of the 1990 Act (prohibitions in connection with embryos) is amended as follows.
- (2) For subsection (2) substitute—
  - “(2) No person shall place in a woman—
    - (a) an embryo other than a permitted embryo (as defined by section 3ZA), or
    - (b) any gametes other than permitted eggs or permitted sperm (as so defined).”
- (3) In subsection (3)—
  - (a) at the end of paragraph (b), insert “ or ”, and
  - (b) omit paragraph (d) and the word “or” immediately before it.
- (4) In subsection (4), for “the day when the gametes are mixed” substitute “ the day on which the process of creating the embryo began ”.
- (5) After section 3 insert—

### **“3ZA Permitted eggs, permitted sperm and permitted embryos**

- (1) This section has effect for the interpretation of section 3(2).
- (2) A permitted egg is one—
  - (a) which has been produced by or extracted from the ovaries of a woman, and
  - (b) whose nuclear or mitochondrial DNA has not been altered.
- (3) Permitted sperm are sperm—
  - (a) which have been produced by or extracted from the testes of a man, and
  - (b) whose nuclear or mitochondrial DNA has not been altered.
- (4) An embryo is a permitted embryo if—
  - (a) it has been created by the fertilisation of a permitted egg by permitted sperm,
  - (b) no nuclear or mitochondrial DNA of any cell of the embryo has been altered, and
  - (c) no cell has been added to it other than by division of the embryo's own cells.
- (5) Regulations may provide that—
  - (a) an egg can be a permitted egg, or
  - (b) an embryo can be a permitted embryo,

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even though the egg or embryo has had applied to it in prescribed circumstances a prescribed process designed to prevent the transmission of serious mitochondrial disease.

(6) In this section—

- (a) “woman” and “man” include respectively a girl and a boy (from birth), and
- (b) “prescribed” means prescribed by regulations.”

(6) The Human Reproductive Cloning Act 2001 (c. 23) (which is superseded by the preceding provisions of this section) ceases to have effect.

#### **4 Prohibitions in connection with genetic material not of human origin**

(1) In section 4 of the 1990 Act (prohibitions in connection with gametes)—

- (a) in subsection (1), omit—
  - (i) paragraph (c), and
  - (ii) the word “or” immediately before it, and
- (b) in subsection (5), after “section 3” insert “ or 4A ”.

(2) After section 4 of the 1990 Act insert—

##### **“4A Prohibitions in connection with genetic material not of human origin**

(1) No person shall place in a woman—

- (a) a human admixed embryo,
- (b) any other embryo that is not a human embryo, or
- (c) any gametes other than human gametes.

(2) No person shall—

- (a) mix human gametes with animal gametes,
- (b) bring about the creation of a human admixed embryo, or
- (c) keep or use a human admixed embryo,

except in pursuance of a licence.

(3) A licence cannot authorise keeping or using a human admixed embryo after the earliest of the following—

- (a) the appearance of the primitive streak, or
- (b) the end of the period of 14 days beginning with the day on which the process of creating the human admixed embryo began, but not counting any time during which the human admixed embryo is stored.

(4) A licence cannot authorise placing a human admixed embryo in an animal.

(5) A licence cannot authorise keeping or using a human admixed embryo in any circumstances in which regulations prohibit its keeping or use.

(6) For the purposes of this Act a human admixed embryo is—

- (a) an embryo created by replacing the nucleus of an animal egg or of an animal cell, or two animal pronuclei, with—

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- (i) two human pronuclei,
  - (ii) one nucleus of a human gamete or of any other human cell,  
or
  - (iii) one human gamete or other human cell,
  - (b) any other embryo created by using—
    - (i) human gametes and animal gametes, or
    - (ii) one human pronucleus and one animal pronucleus,
  - (c) a human embryo that has been altered by the introduction of any sequence of nuclear or mitochondrial DNA of an animal into one or more cells of the embryo,
  - (d) a human embryo that has been altered by the introduction of one or more animal cells, or
  - (e) any embryo not falling within paragraphs (a) to (d) which contains both nuclear or mitochondrial DNA of a human and nuclear or mitochondrial DNA of an animal (“animal DNA”) but in which the animal DNA is not predominant.
- (7) In subsection (6)—
- (a) references to animal cells are to cells of an animal or of an animal embryo, and
  - (b) references to human cells are to cells of a human or of a human embryo.
- (8) For the purposes of this section an “animal” is an animal other than man.
- (9) In this section “embryo” means a live embryo, including an egg that is in the process of fertilisation or is undergoing any other process capable of resulting in an embryo.
- (10) In this section—
- (a) references to eggs are to live eggs, including cells of the female germ line at any stage of maturity, but (except in subsection (9)) not including eggs that are in the process of fertilisation or are undergoing any other process capable of resulting in an embryo, and
  - (b) references to gametes are to eggs (as so defined) or to live sperm, including cells of the male germ line at any stage of maturity.
- (11) If it appears to the Secretary of State necessary or desirable to do so in the light of developments in science or medicine, regulations may—
- (a) amend (but not repeal) paragraphs (a) to (e) of subsection (6);
  - (b) provide that in this section “embryo”, “eggs” or “gametes” includes things specified in the regulations which would not otherwise fall within the definition.
- (12) Regulations made by virtue of subsection (11)(a) may make any amendment of subsection (7) that appears to the Secretary of State to be appropriate in consequence of any amendment of subsection (6).”

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### *The Human Fertilisation and Embryology Authority*

VALID FROM 01/10/2009

#### **5 Membership of Authority: disqualification and tenure**

Schedule 1 contains amendments of Schedule 1 to the 1990 Act (which are about disqualification for appointment to membership of the Authority and the tenure of office of members).

VALID FROM 01/10/2009

#### **6 Additional general functions of Authority**

(1) In section 8 of the 1990 Act (general functions of the Authority), renumber the existing provision as subsection (1) of that section.

(2) In that subsection—

- (a) omit the word “and” immediately after paragraph (c), and
- (b) after that paragraph insert—

“(ca) maintain a statement of the general principles which it considers should be followed—

- (i) in the carrying-on of activities governed by this Act, and
- (ii) in the carrying-out of its functions in relation to such activities,

(cb) promote, in relation to activities governed by this Act, compliance with—

- (i) requirements imposed by or under this Act, and
- (ii) the code of practice under section 25 of this Act, and”.

(3) After that subsection, insert—

“(2) The Authority may, if it thinks fit, charge a fee for any advice provided under subsection (1)(c).”

VALID FROM 01/10/2009

#### **7 Duties in relation to carrying out its functions**

After section 8 (general functions of the Authority) insert—

##### **“8ZA Duties in relation to carrying out its functions**

(1) The Authority must carry out its functions effectively, efficiently and economically.

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- (2) In carrying out its functions, the Authority must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed).”

## **8 Power to contract out functions etc.**

After section 8A of the 1990 Act (duty of Authority to communicate with competent authorities of other EEA states) insert—

### **“8B Agency arrangements and provision of services**

- (1) Arrangements may be made between the Authority and a government department, a public authority or the holder of a public office (“the other authority”) for—
- (a) any functions of the Authority to be exercised by, or by members of the staff of, the other authority, or
  - (b) the provision by the other authority of administrative, professional or technical services to the Authority.
- (2) Arrangements under subsection (1)(a) do not affect responsibility for the carrying-out of the Authority's functions.
- (3) Subsection (1)(a) does not apply to any function of making subordinate legislation (within the meaning of the Interpretation Act 1978).

### **8C Contracting out functions of Authority**

- (1) This section applies to any function of the Authority other than—
- (a) any function which, by virtue of any enactment, may be exercised only by members of the Authority,
  - (b) a function excluded from this section by subsection (2), or
  - (c) a function excluded from this section by the Secretary of State by order.
- (2) A function is excluded from this section if—
- (a) it relates to the grant, revocation or variation of any licence,
  - (b) it is a power or right of entry, search or seizure into or of any property, or
  - (c) it is a function of making subordinate legislation (within the meaning of the Interpretation Act 1978).
- (3) The Authority may make arrangements with any person (“the authorised person”) for the exercise by that person, or by the employees of that person, of any function of the Authority to which this section applies.
- (4) Any arrangements made by the Authority under this section—
- (a) may be revoked at any time by the Authority, and
  - (b) do not prevent the Authority from exercising any function to which the arrangements relate.

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- (5) Subject to subsection (6), anything done or omitted to be done by or in relation to the authorised person (or an employee of the authorised person) in, or in connection with, the exercise or purported exercise of any function to which the arrangements relate is to be treated for all purposes as done or omitted to be done by or in relation to the Authority.
- (6) Subsection (5) does not apply—
- (a) for the purposes of so much of any contract between the authorised person and the Authority as relates to the exercise of the function, or
  - (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by the authorised person (or any employee of the authorised person).
- (7) Section 38A(2) of this Act (which relates to the keeping of embryos, human admixed embryos and gametes) applies in relation to the authorised person or any employee of the authorised person, when exercising functions of the Authority, as it applies in relation to any member or employee of the Authority exercising functions as member or employee.

#### **8D Disclosure of information where functions of Authority exercised by others**

- (1) This section applies to—
- (a) the Authority,
  - (b) any public authority or other person exercising functions of the Authority by virtue of section 8B,
  - (c) any member of staff of any person falling within paragraph (b),
  - (d) any person exercising functions of the Authority by virtue of section 8C,
  - (e) an employee of any person falling within paragraph (d), or
  - (f) any person engaged by the Authority to provide services to the Authority.
- (2) No obligation of confidence is to prevent the disclosure of information by a person to whom this section applies to another such person if the disclosure is necessary or expedient for the purposes of the exercise of any function of the Authority.”

#### **Commencement Information**

- II** S. 8 wholly in force at 1.10.2009; s. 8 not in force at Royal Assent see s. 68; s. 8 in force for certain purposes at 6.4.2009 by S.I. 2009/479, art. 2 (with Sch.); s. 8 in force at 1.10.2009 otherwise by S.I. 2009/2232, art. 2(b)

VALID FROM 01/10/2009

#### **9 Power to assist other public authorities**

After section 8D (inserted by section 8 above) insert—



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#### **“8E Power to assist other public authorities**

- (1) The Authority may if it thinks it appropriate to do so provide assistance to any other public authority in the United Kingdom for the purpose of the exercise by that authority of its functions.
- (2) Assistance provided by the Authority under this section may be provided on such terms, including terms as to payment, as it thinks fit.”

VALID FROM 01/10/2009

### **10 Power to delegate and establish committees**

For section 9 (licence committees and other committees) of the 1990 Act substitute—

#### **“9A Power to delegate and establish committees**

- (1) The Authority may delegate a function to a committee, to a member or to staff.
- (2) The Authority may establish such committees or sub-committees as it thinks fit (whether to advise the Authority or to exercise a function delegated to it by the Authority).
- (3) Subject to any provision made by regulations under section 20A (appeals committees), the members of the committees or sub-committees may include persons who are not members of the Authority.
- (4) Subsection (1) has effect subject to any enactment requiring a decision to be taken by members of the Authority or by a committee consisting of members of the Authority.”

VALID FROM 01/10/2009

#### *Scope of licences*

### **11 Activities that may be licensed**

- (1) In section 11 of the 1990 Act (licences for treatment, storage and research), in subsection (1)(b), for “and embryos” substitute “ , embryos or human admixed embryos ”.
- (2) Schedule 2 contains amendments of Schedule 2 to the 1990 Act (which relates to the activities for which licences may be granted under the Act).
- (3) The Human Fertilisation and Embryology (Research Purposes) Regulations 2001 (S.I. 2001/188) (which are superseded by the amendments made by Schedule 2) cease to have effect.

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### *Licence conditions*

VALID FROM 01/10/2009

#### **12 General conditions of licences**

- (1) Section 12 of the 1990 Act (general conditions of licences under that Act) is amended as follows.
- (2) In subsection (1)—
  - (a) in paragraph (c) (condition relating to compliance with Schedule 3 to the Act), omit “or non-medical fertility services”, and
  - (b) in paragraphs (e) and (f) (which relate to the supply of gametes or embryos), for “or embryos” substitute “, embryos or human admixed embryos”.
- (3) In subsection (2)—
  - (a) omit the “and” at the end of paragraph (a), and
  - (b) at the end of paragraph (b) insert “, and
  - (c) every licence under paragraph 3 of that Schedule, so far as authorising activities in connection with the derivation from embryos of stem cells that are intended for human application.”

VALID FROM 01/10/2009

#### **13 Consent to use or storage of gametes, embryos, human admixed embryos etc.**

Schedule 3 contains amendments of Schedule 3 to the 1990 Act (which relates to consent to the use or storage of gametes or embryos).

#### **14 Conditions of licences for treatment**

- (1) Section 13 of the 1990 Act (conditions of licences for treatment) is amended in accordance with subsections (2) to (4).
- (2) In subsection (5)—
  - (a) omit “, other than basic partner treatment services”, and
  - (b) for “a father” substitute “supportive parenting”.
- (3) For subsection (6) substitute—
 

“(6) A woman shall not be provided with treatment services of a kind specified in Part 1 of Schedule 3ZA unless she and any man or woman who is to be treated together with her have been given a suitable opportunity to receive proper counselling about the implications of her being provided with treatment services of that kind, and have been provided with such relevant information as is proper.

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- (6A) A woman shall not be provided with treatment services after the happening of any event falling within any paragraph of Part 2 of Schedule 3ZA unless (before or after the event) she and the intended second parent have been given a suitable opportunity to receive proper counselling about the implications of the woman being provided with treatment services after the happening of that event, and have been provided with such relevant information as is proper.
- (6B) The reference in subsection (6A) to the intended second parent is a reference to—
- (a) any man as respects whom the agreed fatherhood conditions in section 37 of the Human Fertilisation and Embryology Act 2008 (“the 2008 Act”) are for the time being satisfied in relation to treatment provided to the woman mentioned in subsection (6A), and
  - (b) any woman as respects whom the agreed female parenthood conditions in section 44 of the 2008 Act are for the time being satisfied in relation to treatment provided to the woman mentioned in subsection (6A).
- (6C) In the case of treatment services falling within paragraph 1 of Schedule 3ZA (use of gametes of a person not receiving those services) or paragraph 3 of that Schedule (use of embryo taken from a woman not receiving those services), the information provided by virtue of subsection (6) or (6A) must include such information as is proper about—
- (a) the importance of informing any resulting child at an early age that the child results from the gametes of a person who is not a parent of the child, and
  - (b) suitable methods of informing such a child of that fact.
- (6D) Where the person responsible receives from a person (“X”) notice under section 37(1)(c) or 44(1)(c) of the 2008 Act of X’s withdrawal of consent to X being treated as the parent of any child resulting from the provision of treatment services to a woman (“W”), the person responsible—
- (a) must notify W in writing of the receipt of the notice from X, and
  - (b) no person to whom the licence applies may place an embryo or sperm and eggs in W, or artificially inseminate W, until W has been so notified.
- (6E) Where the person responsible receives from a woman (“W”) who has previously given notice under section 37(1)(b) or 44(1)(b) of the 2008 Act that she consents to another person (“X”) being treated as a parent of any child resulting from the provision of treatment services to W—
- (a) notice under section 37(1)(c) or 44(1)(c) of the 2008 Act of the withdrawal of W’s consent, or
  - (b) a notice under section 37(1)(b) or 44(1)(b) of the 2008 Act in respect of a person other than X,
- the person responsible must take reasonable steps to notify X in writing of the receipt of the notice mentioned in paragraph (a) or (b).”

(4) After subsection (7) insert—

“(8) Subsections (9) and (10) apply in determining any of the following—

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- (a) the persons who are to provide gametes for use in pursuance of the licence in a case where consent is required under paragraph 5 of Schedule 3 for the use in question;
  - (b) the woman from whom an embryo is to be taken for use in pursuance of the licence, in a case where her consent is required under paragraph 7 of Schedule 3 for the use of the embryo;
  - (c) which of two or more embryos to place in a woman.
- (9) Persons or embryos that are known to have a gene, chromosome or mitochondrion abnormality involving a significant risk that a person with the abnormality will have or develop—
- (a) a serious physical or mental disability,
  - (b) a serious illness, or
  - (c) any other serious medical condition,
- must not be preferred to those that are not known to have such an abnormality.
- (10) Embryos that are known to be of a particular sex and to carry a particular risk, compared with embryos of that sex in general, that any resulting child will have or develop—
- (a) a gender-related serious physical or mental disability,
  - (b) a gender-related serious illness, or
  - (c) any other gender-related serious medical condition,
- must not be preferred to those that are not known to carry such a risk.
- (11) For the purposes of subsection (10), a physical or mental disability, illness or other medical condition is gender-related if—
- (a) it affects only one sex, or
  - (b) it affects one sex significantly more than the other.
- (12) No embryo appropriated for the purpose mentioned in paragraph 1(1)(ca) of Schedule 2 (training in embryological techniques) shall be kept or used for the provision of treatment services.
- (13) The person responsible shall comply with any requirement imposed on that person by section 31ZD.”
- (5) After Schedule 3 to the 1990 Act insert the Schedule set out in Schedule 4 to this Act (circumstances in which offer of counselling required as condition of licence for treatment).
- (6) In any licence under paragraph 1 of Schedule 2 to the 1990 Act (licences for treatment) that is in force immediately before the commencement of subsection (2) (b) of this section, the condition required by virtue of section 13(5) of that Act is to have effect as the condition required by that provision as amended by subsection (2) (b) of this section.

#### **Commencement Information**

- I2** S. 14 wholly in force at 1.10.2009; s. 14 not in force at Royal Assent see s. 68; s. 14(3)(5) in force and s. 14(1) in force for certain purposes at 6.4.2009 by S.I. 2009/479, art. 4(a) (with Sch.); s. 14 in force at 1.10.2009 otherwise by S.I. 2009/2232, art. 2(d) (with art. 4)

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## 15 Conditions of storage licences

(1) Section 14 of the 1990 Act (conditions of storage licences) is amended as follows.

(2) In subsection (1)—

(a) for “authorising the storage of gametes or embryos” substitute “ authorising the storage of gametes, embryos or human admixed embryos ”,

(b) for paragraph (a) substitute—

“(a) that gametes of a person shall be placed in storage only if—

(i) received from that person,

(ii) acquired in circumstances in which by virtue of paragraph 9 or 10 of Schedule 3 that person’s consent to the storage is not required, or

(iii) acquired from a person to whom a licence or third party agreement applies,

(aa) that an embryo taken from a woman shall be placed in storage only if—

(i) received from that woman, or

(ii) acquired from a person to whom a licence or third party agreement applies,

(ab) that an embryo the creation of which has been brought about *in vitro* otherwise than in pursuance of that licence shall be placed in storage only if acquired from a person to whom a licence or third party agreement applies,

(ac) that a human admixed embryo the creation of which has been brought about *in vitro* otherwise than in pursuance of that licence shall be placed in storage only if acquired from a person to whom a licence under paragraph 2 or 3 of Schedule 2 applies,”

(c) after paragraph (b) insert—

“(ba) that human admixed embryos shall not be supplied to a person unless that person is a person to whom a licence applies,” and

(d) in paragraph (c), for “or embryos” substitute “ , embryos or human admixed embryos ”.

(3) In subsection (4), for “five years” substitute “ ten years ”.

(4) After subsection (4) insert—

“(4A) The statutory storage period in respect of human admixed embryos is such period not exceeding ten years as the licence may specify.”

(5) In subsection (5)—

(a) for “or (4)” substitute “ , (4) or (4A) ”, and

(b) omit “ or, as the case may be, five years ”.

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### Commencement Information

- I3** S. 15 partly in force; s. 15 not in force at Royal Assent see s. 68; s. 15(3)(5) in force for certain purposes at 6.4.2009 by S.I. 2009/479, art. 5(a) (with Sch.); s. 15 in force at 1.10.2009 otherwise by S.I. 2009/2232, art. 2(e)

### *Grant, revocation and suspension of licences*

VALID FROM 01/10/2009

## 16 Grant of licence

- (1) Section 16 of the 1990 Act (grant of licence) is amended as follows.
- (2) For subsection (1) substitute—
  - “(1) The Authority may on application grant a licence to any person if the requirements of subsection (2) below are met.”
- (3) In subsection (2)—
  - (a) for “licence committee” substitute “ Authority ” in each place it occurs,
  - (b) in paragraph (c), after “application” insert “ or a licence under paragraph 3 of that Schedule authorising activities in connection with the derivation from embryos of stem cells that are intended for human application ”,
  - (c) in paragraph (ca)—
    - (i) for “or embryos” substitute “ , embryos or human admixed embryos ”, and
    - (ii) after “that Schedule” insert “ authorising activities otherwise than in connection with the derivation from embryos of stem cells that are intended for human application ”, and
  - (d) in paragraph (d), after “granted” insert “ and any premises which will be relevant third party premises ”.
- (4) In subsection (4) for “licence committee” substitute “ Authority ”.
- (5) In subsection (5) for “licence committee” substitute “ Authority ”.
- (6) Omit subsections (6) and (7) (which concern the power to charge fees).

VALID FROM 01/10/2009

## 17 The person responsible

- (1) Section 17 of the 1990 Act (the person responsible) is amended as follows.
- (2) In subsection (1)(c)—
  - (a) for “and embryos” substitute “ , embryos and human admixed embryos ”, and
  - (b) for “or embryos” substitute “ , embryos or human admixed embryos ”.

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(3) Omit subsection (3) (which defines “the nominal licensee”).

VALID FROM 01/10/2009

## 18 Revocation and variation of licence

For section 18 of the 1990 Act (revocation and variation of licence) substitute—

### “18 Revocation of licence

- (1) The Authority may revoke a licence on application by—
  - (a) the person responsible, or
  - (b) the holder of the licence (if different).
- (2) The Authority may revoke a licence otherwise than on application under subsection (1) if—
  - (a) it is satisfied that any information given for the purposes of the application for the licence was in any material respect false or misleading,
  - (b) it is satisfied that the person responsible has failed to discharge, or is unable because of incapacity to discharge, the duty under section 17,
  - (c) it is satisfied that the person responsible has failed to comply with directions given in connection with any licence,
  - (d) it ceases to be satisfied that the premises specified in the licence are suitable for the licensed activity,
  - (e) it ceases to be satisfied that any premises which are relevant third party premises in relation to a licence are suitable for the activities entrusted to the third party by the person who holds the licence,
  - (f) it ceases to be satisfied that the holder of the licence is a suitable person to hold the licence,
  - (g) it ceases to be satisfied that the person responsible is a suitable person to supervise the licensed activity,
  - (h) the person responsible dies or is convicted of an offence under this Act, or
  - (i) it is satisfied that there has been any other material change of circumstances since the licence was granted.

### 18A Variation of licence

- (1) The Authority may on application by the holder of the licence vary the licence so as to substitute another person for the person responsible if—
  - (a) the application is made with the consent of that other person, and
  - (b) the Authority is satisfied that the other person is a suitable person to supervise the licensed activity.
- (2) The Authority may vary a licence on application by—

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- (a) the person responsible, or
  - (b) the holder of the licence (if different).
- (3) The Authority may vary a licence without an application under subsection (2) if it has the power to revoke the licence under section 18(2).
- (4) The powers under subsections (2) and (3) do not extend to making the kind of variation mentioned in subsection (1).
- (5) The Authority may vary a licence without an application under subsection (2) by—
- (a) removing or varying a condition of the licence, or
  - (b) adding a condition to the licence.
- (6) The powers conferred by this section do not extend to the conditions required by sections 12 to 15 of this Act.”

## **19 Procedure for refusal, variation or revocation of licence**

For section 19 of the 1990 Act (procedure for refusal, variation or revocation of licence) substitute—

### **“19 Procedure in relation to licensing decisions**

- (1) Before making a decision—
- (a) to refuse an application for the grant, revocation or variation of a licence, or
  - (b) to grant an application for a licence subject to a condition imposed under paragraph 1(2), 1A(2), 2(2) or 3(6) of Schedule 2,
- the Authority shall give the applicant notice of the proposed decision and of the reasons for it.
- (2) Before making a decision under section 18(2) or 18A(3) or (5) the Authority shall give notice of the proposed decision and of the reasons for it to—
- (a) the person responsible, and
  - (b) the holder of the licence (if different).
- (3) Where an application has been made under section 18A(2) to vary a licence, but the Authority considers it appropriate to vary the licence otherwise than in accordance with the application, before so varying the licence the Authority shall give notice of its proposed decision and of the reasons for it to—
- (a) the person responsible, and
  - (b) the holder of the licence (if different).
- (4) A person to whom notice is given under subsection (1), (2) or (3) has the right to require the Authority to give him an opportunity to make representations of one of the following kinds about the proposed decision, namely—
- (a) oral representations by him, or a person acting on his behalf;
  - (b) written representations by him.



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- (5) The right under subsection (4) is exercisable by giving the Authority notice of the exercise of the right before the end of the period of 28 days beginning with the day on which the notice under subsection (1), (2) or (3) was given.
- (6) The Authority may by regulations make such additional provision about procedure in relation to the carrying out of functions under sections 18 and 18A and this section as it thinks fit.

### **19A Notification of licensing decisions**

- (1) In the case of a decision to grant a licence, the Authority shall give notice of the decision to—
  - (a) the applicant, and
  - (b) the person who is to be the person responsible.
- (2) In the case of a decision to revoke a licence, the Authority shall give notice of the decision to—
  - (a) the person responsible, and
  - (b) the holder of the licence (if different).
- (3) In the case of a decision to vary a licence on application under section 18A(1), the Authority shall give notice of the decision to—
  - (a) the holder of the licence, and
  - (b) (if different) the person who is to be the person responsible.
- (4) In the case of any other decision to vary a licence, the Authority shall give notice of the decision to—
  - (a) the person responsible, and
  - (b) the holder of the licence (if different).
- (5) In the case of a decision to refuse an application for the grant, revocation or variation of a licence, the Authority shall give notice of the decision to the applicant.
- (6) Subject to subsection (7), a notice under subsection (2), (4) or (5) shall include a statement of the reasons for the decision.
- (7) In the case of a notice under subsection (2) or (4), the notice is not required to include a statement of the reasons for the decision if the decision is made on an application under section 18(1) or 18A(2).

### **19B Applications under this Act**

- (1) Directions may make provision about—
  - (a) the form and content of applications under this Act, and
  - (b) the information to be supplied with such an application.
- (2) The Secretary of State may by regulations make other provision about applications under this Act.
- (3) Such regulations may, in particular, make provision about procedure in relation to the determination of applications under this Act and may, in particular, include—

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- (a) provision for requiring persons to give evidence or to produce documents;
- (b) provision about the admissibility of evidence.”

#### Commencement Information

**I4** S. 19 wholly in force; s. 19 not in force at Royal Assent see s. 68; s. 19 in force for certain purposes at 6.4.2009 by S.I. 2009/479, art. 5(b) (with Sch.); s. 19 in force at 1.10.2009 otherwise by S.I. 2009/2232, art. 2(g)

VALID FROM 01/10/2009

## 20 Power to suspend licence

After section 19B (inserted by section 19 above) insert—

### “19C Power to suspend licence

- (1) Where the Authority—
  - (a) has reasonable grounds to suspect that there are grounds for revoking a licence, and
  - (b) is of the opinion that the licence should immediately be suspended,
 it may by notice suspend the licence for such period not exceeding three months as may be specified in the notice.
- (2) The Authority may continue suspension under subsection (1) by giving a further notice under that subsection.
- (3) Notice under subsection (1) shall be given to the person responsible or where the person responsible has died or appears to be unable because of incapacity to discharge the duty under section 17—
  - (a) to the holder of the licence, or
  - (b) to some other person to whom the licence applies.
- (4) Subject to subsection (5), a licence shall be of no effect while a notice under subsection (1) is in force.
- (5) An application may be made under section 18(1) or section 18A(1) or (2) even though a notice under subsection (1) is in force.”

## 21 Reconsideration and appeals

For sections 20 and 21 of the 1990 Act (appeals to Authority against determinations of licence committees and further appeals) substitute—

### “20 Right to reconsideration of licensing decisions

- (1) If an application for the grant, revocation or variation of a licence is refused, the applicant may require the Authority to reconsider the decision.

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- (2) Where the Authority decides to vary or revoke a licence, any person to whom notice of the decision was required to be given (other than a person who applied for the variation or revocation) may require the Authority to reconsider the decision.
- (3) The right under subsections (1) and (2) is exercisable by giving the Authority notice of exercise of the right before the end of the period of 28 days beginning with the day on which notice of the decision concerned was given under section 19A.
- (4) If the Authority decides —
  - (a) to suspend a licence under section 19C(1), or
  - (b) to continue the suspension of a licence under section 19C(2),any person to whom notice of the decision was required to be given may require the Authority to reconsider the decision.
- (5) The right under subsection (4) is exercisable by giving the Authority notice of exercise of the right before the end of the period of 14 days beginning with the day on which notice of the decision concerned was given under section 19C.
- (6) The giving of any notice to the Authority in accordance with subsection (5) shall not affect the continuation in force of the suspension of the licence in respect of which that notice was given.
- (7) Subsections (1), (2) and (4) do not apply to a decision on reconsideration.

#### **20A Appeals committee**

- (1) The Authority shall maintain one or more committees to carry out its functions in pursuance of notices under section 20.
- (2) A committee under subsection (1) is referred to in this Act as an appeals committee.
- (3) Regulations shall make provision about the membership and proceedings of appeals committees.
- (4) Regulations under subsection (3) may, in particular, provide—
  - (a) for the membership of an appeals committee to be made up wholly or partly of persons who are not members of the Authority, and
  - (b) for the appointment of any person to advise an appeals committee on prescribed matters.
- (5) For the purposes of subsection (4) “prescribed” means prescribed by regulations under subsection (3).

#### **20B Procedure on reconsideration**

- (1) Reconsideration shall be by way of a fresh decision.
- (2) Regulations shall make provision about the procedure in relation to reconsideration.
- (3) Regulations under subsection (2) may, in particular, make provision—

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- (a) entitling a person by whom reconsideration is required, (“the appellant”) to require that the appellant or the appellant's representative be given an opportunity to appear before and be heard by the appeals committee dealing with the matter,
  - (b) entitling the person who made the decision which is the subject of reconsideration to appear at any meeting at which such an opportunity is given, and to be heard in person or by a representative,
  - (c) requiring the appeals committee dealing with the matter to consider any written representations received from the appellant or the person who made the decision which is the subject of reconsideration,
  - (d) preventing any person who made the decision which is the subject of reconsideration from sitting as a member of the appeals committee dealing with the matter,
  - (e) requiring persons to give evidence or to produce documents,
  - (f) concerning the admissibility of evidence, and
  - (g) requiring the appellant and any prescribed person to be given notice of the decision on reconsideration and a statement of reasons for the appeals committee's decision.
- (4) Regulations under subsection (2) may, in particular, make different provision about the procedure on reconsideration depending upon whether the reconsideration is in pursuance of a notice under section 20(3) or a notice under section 20(5).
- (5) Such regulations may, in particular, make provision—
- (a) in relation to cases where a person requires reconsideration of a decision to suspend a licence and reconsideration of a decision to continue the suspension of that licence, and
  - (b) in relation to cases where reconsideration of a decision is required under section 20(2) by only one of two persons by whom it could have been required.
- (6) In this section—
- (a) “prescribed” means prescribed by regulations under subsection (2), and
  - (b) “reconsideration” means reconsideration in pursuance of a notice under section 20.

## 21 Appeal on a point of law

A person aggrieved by a decision on reconsideration in pursuance of a notice under section 20 may appeal to the High Court or, in Scotland, the Court of Session on a point of law.”

### Commencement Information

- I5** S. 21 wholly in force at 1.10.2009; s. 21 not in force at Royal Assent see s. 68; s. 21 in force for certain purposes at 6.4.2009 by S.I. 2009/479, arts. 3, 5(c)(h) (with Sch.); s. 21 in force at 1.10.2009 otherwise by S.I. 2009/2232, art. 2(i)

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VALID FROM 01/10/2009

### *Directions and guidance*

## **22 Directions**

- (1) Section 24 of the 1990 Act (directions as to particular matters) is amended as follows.
- (2) After subsection (3A) insert—

“(3B) Directions may authorise, in such circumstances and subject to such conditions as may be specified in the directions, the keeping, by or on behalf of a person to whom a licence applies, of human admixed embryos in the course of their carriage to or from any premises.”
- (3) In subsection (4) for “or embryos”, in both places, substitute “, embryos or human admixed embryos”.
- (4) After subsection (4A) insert—

“(4B) Regulations may make provision requiring or authorising the giving of directions in relation to particular matters which are specified in the regulations and relate to activities falling within section 4A(2) (activities involving genetic material of animal origin).”
- (5) For subsections (5) to (10) substitute—

“(5A) Directions may make provision for the purpose of dealing with a situation arising in consequence of—

  - (a) the variation of a licence, or
  - (b) a licence ceasing to have effect.

(5B) Directions under subsection (5A)(a) may impose requirements—

  - (a) on the holder of the licence,
  - (b) on the person who is the person responsible immediately before or immediately after the variation, or
  - (c) on any other person, if that person consents.

(5C) Directions under subsection (5A)(b) may impose requirements—

  - (a) on the person who holds the licence immediately before the licence ceases to have effect,
  - (b) on the person who is the person responsible at that time, or
  - (c) on any other person, if that person consents.

(5D) Directions under subsection (5A) may, in particular, require anything kept, or information held, in pursuance of the licence to be transferred in accordance with the directions.

(5E) Where a licence has ceased to have effect by reason of the death or dissolution of its holder, anything subsequently done by a person before directions are given under subsection (5A) shall, if the licence would have been authority for doing it, be treated as authorised by a licence.”

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(6) In subsection (11), for “3(5)” substitute “ 3(2) ”.

### **23 Code of practice**

(1) Section 25 of the 1990 Act (code of practice) is amended as follows.

(2) In subsection (2), for “a father” substitute “ supportive parenting ”.

(3) After that subsection insert—

“(2A) The code shall also give guidance about—

(a) the giving of a suitable opportunity to receive proper counselling,  
and

(b) the provision of such relevant information as is proper,  
in accordance with any condition that is by virtue of section 13(6) or (6A)  
a condition of a licence under paragraph 1 of Schedule 2.”

(4) In subsection (6)(a) and (b), for “a licence committee” substitute “ the Authority ”.

### *Information*

### **24 Register of information**

For section 31 of the 1990 Act (the Authority's register of information) substitute—

#### **“31 Register of information**

(1) The Authority shall keep a register which is to contain any information which falls within subsection (2) and which—

- (a) immediately before the coming into force of section 24 of the Human Fertilisation and Embryology Act 2008, was contained in the register kept under this section by the Authority, or
- (b) is obtained by the Authority.

(2) Subject to subsection (3), information falls within this subsection if it relates to—

- (a) the provision for any identifiable individual of treatment services other than basic partner treatment services,
  - (b) the procurement or distribution of any sperm, other than sperm which is partner-donated sperm and has not been stored, in the course of providing non-medical fertility services for any identifiable individual,
  - (c) the keeping of the gametes of any identifiable individual or of an embryo taken from any identifiable woman,
  - (d) the use of the gametes of any identifiable individual other than their use for the purpose of basic partner treatment services, or
  - (e) the use of an embryo taken from any identifiable woman,
- or if it shows that any identifiable individual is a relevant individual.

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- (3) Information does not fall within subsection (2) if it is provided to the Authority for the purposes of any voluntary contact register as defined by section 31ZF(1).
- (4) In this section “relevant individual” means an individual who was or may have been born in consequence of—
  - (a) treatment services, other than basic partner treatment services, or
  - (b) the procurement or distribution of any sperm (other than partner-donated sperm which has not been stored) in the course of providing non-medical fertility services.

### **31ZA Request for information as to genetic parentage etc.**

- (1) A person who has attained the age of 16 (“the applicant”) may by notice to the Authority require the Authority to comply with a request under subsection (2).
- (2) The applicant may request the Authority to give the applicant notice stating whether or not the information contained in the register shows that a person (“the donor”) other than a parent of the applicant would or might, but for the relevant statutory provisions, be the parent of the applicant, and if it does show that—
  - (a) giving the applicant so much of that information as relates to the donor as the Authority is required by regulations to give (but no other information), or
  - (b) stating whether or not that information shows that there are other persons of whom the donor is not the parent but would or might, but for the relevant statutory provisions, be the parent and if so—
    - (i) the number of those other persons,
    - (ii) the sex of each of them, and
    - (iii) the year of birth of each of them.
- (3) The Authority shall comply with a request under subsection (2) if—
  - (a) the information contained in the register shows that the applicant is a relevant individual, and
  - (b) the applicant has been given a suitable opportunity to receive proper counselling about the implications of compliance with the request.
- (4) Where a request is made under subsection (2)(a) and the applicant has not attained the age of 18 when the applicant gives notice to the Authority under subsection (1), regulations cannot require the Authority to give the applicant any information which identifies the donor.
- (5) Regulations cannot require the Authority to give any information as to the identity of a person whose gametes have been used or from whom an embryo has been taken if a person to whom a licence applied was provided with the information at a time when the Authority could not have been required to give information of the kind in question.
- (6) The Authority need not comply with a request made under subsection (2) (b) by any applicant if it considers that special circumstances exist which

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increase the likelihood that compliance with the request would enable the applicant—

- (a) to identify the donor, in a case where the Authority is not required by regulations under subsection (2)(a) to give the applicant information which identifies the donor, or
- (b) to identify any person about whom information is given under subsection (2)(b).

(7) In this section—

“relevant individual” has the same meaning as in section 31;

“the relevant statutory provisions” means sections 27 to 29 of this Act and sections 33 to 47 of the Human Fertilisation and Embryology Act 2008.

### **31ZB Request for information as to intended spouse etc.**

- (1) Subject to subsection (4), a person (“the applicant”) may by notice to the Authority require the Authority to comply with a request under subsection (2).
- (2) The applicant may request the Authority to give the applicant notice stating whether or not information contained in the register shows that, but for the relevant statutory provisions, the applicant would or might be related to a person specified in the request (“the specified person”) as—
  - (a) a person whom the applicant proposes to marry,
  - (b) a person with whom the applicant proposes to enter into a civil partnership, or
  - (c) a person with whom the applicant is in an intimate physical relationship or with whom the applicant proposes to enter into an intimate physical relationship.
- (3) Subject to subsection (5), the Authority shall comply with a request under subsection (2) if—
  - (a) the information contained in the register shows that the applicant is a relevant individual,
  - (b) the Authority receives notice in writing from the specified person consenting to the request being made and that notice has not been withdrawn, and
  - (c) the applicant and the specified person have each been given a suitable opportunity to receive proper counselling about the implications of compliance with the request.
- (4) A request may not be made under subsection (2)(c) by a person who has not attained the age of 16.
- (5) Where a request is made under subsection (2)(c) and the specified person has not attained the age of 16 when the applicant gives notice to the Authority under subsection (1), the Authority must not comply with the request.
- (6) Where the Authority is required under subsection (3) to comply with a request under subsection (2), the Authority must take all reasonable steps to give the applicant and the specified person notice stating whether or not the information contained in the register shows that, but for the relevant



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statutory provisions, the applicant and the specified person would or might be related.

(7) In this section—

“relevant individual” has the same meaning as in section 31;

“the relevant statutory provisions” has the same meaning as in section 31ZA.

### **31ZC Power of Authority to inform donor of request for information**

(1) Where—

(a) the Authority has received from a person (“the applicant”) a notice containing a request under subsection (2)(a) of section 31ZA, and

(b) compliance by the Authority with its duty under that section has involved or will involve giving the applicant information relating to a person other than the parent of the applicant who would or might, but for the relevant statutory provisions, be a parent of the applicant (“the donor”),

the Authority may notify the donor that a request under section 31ZA(2)

(a) has been made, but may not disclose the identity of the applicant or any information relating to the applicant.

(2) In this section “the relevant statutory provisions” has the same meaning as in section 31ZA.

### **31ZD Provision to donor of information about resulting children**

(1) This section applies where a person (“the donor”) has consented under Schedule 3 (whether before or after the coming into force of this section) to—

(a) the use of the donor's gametes, or an embryo the creation of which was brought about using the donor's gametes, for the purposes of treatment services provided under a licence, or

(b) the use of the donor's gametes for the purposes of non-medical fertility services provided under a licence.

(2) In subsection (1)—

(a) “treatment services” do not include treatment services provided to the donor, or to the donor and another person together, and

(b) “non-medical fertility services” do not include any services involving partner-donated sperm.

(3) The donor may by notice request the appropriate person to give the donor notice stating—

(a) the number of persons of whom the donor is not a parent but would or might, but for the relevant statutory provisions, be a parent by virtue of the use of the gametes or embryos to which the consent relates,

(b) the sex of each of those persons, and

(c) the year of birth of each of those persons.

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- (4) Subject to subsections (5) to (7), the appropriate person shall notify the donor whether the appropriate person holds the information mentioned in subsection (3) and, if the appropriate person does so, shall comply with the request.
- (5) The appropriate person need not comply with a request under subsection (3) if the appropriate person considers that special circumstances exist which increase the likelihood that compliance with the request would enable the donor to identify any of the persons falling within paragraphs (a) to (c) of subsection (3).
- (6) In the case of a donor who consented as described in subsection (1)(a), the Authority need not comply with a request made to it under subsection (3) where the person who held the licence referred to in subsection (1)(a) continues to hold a licence under paragraph 1 of Schedule 2, unless the donor has previously made a request under subsection (3) to the person responsible and the person responsible—
  - (a) has notified the donor that the information concerned is not held, or
  - (b) has failed to comply with the request within a reasonable period.
- (7) In the case of a donor who consented as described in subsection (1)(b), the Authority need not comply with a request made to it under subsection (3) where the person who held the licence referred to in subsection (1)(b) continues to hold a licence under paragraph 1A of Schedule 2, unless the donor has previously made a request under subsection (3) to the person responsible and the person responsible—
  - (a) has notified the donor that the information concerned is not held, or
  - (b) has failed to comply with the request within a reasonable period.
- (8) In this section “the appropriate person” means—
  - (a) in the case of a donor who consented as described in paragraph (a) of subsection (1)—
    - (i) where the person who held the licence referred to in that paragraph continues to hold a licence under paragraph 1 of Schedule 2, the person responsible, or
    - (ii) the Authority, and
  - (b) in the case of a donor who consented as described in paragraph (b) of subsection (1)—
    - (i) where the person who held the licence referred to in that paragraph continues to hold a licence under paragraph 1A of Schedule 2, the person responsible, or
    - (ii) the Authority.
- (9) In this section “the relevant statutory provisions” has the same meaning as in section 31ZA.

### **31ZE Provision of information about donor-conceived genetic siblings**

- (1) For the purposes of this section two relevant individuals are donor-conceived genetic siblings of each other if a person (“the donor”) who is not the parent of either of them would or might, but for the relevant statutory provisions, be the parent of both of them.

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*Changes to legislation:* Human Fertilisation and Embryology Act 2008 is up to date with all changes known to be in force on or before 12 March 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)

- (2) Where—
- (a) the information on the register shows that a relevant individual (“A”) is the donor-conceived genetic sibling of another relevant individual (“B”),
  - (b) A has provided information to the Authority (“the agreed information”) which consists of or includes information which enables A to be identified with the request that it should be disclosed to—
    - (i) any donor-conceived genetic sibling of A, or
    - (ii) such siblings of A of a specified description which includes B, and
  - (c) the conditions in subsection (3) are satisfied,
- then, subject to subsection (4), the Authority shall disclose the agreed information to B.
- (3) The conditions referred to in subsection (2)(c) are—
- (a) that each of A and B has attained the age of 18,
  - (b) that B has requested the disclosure to B of information about any donor-conceived genetic sibling of B, and
  - (c) that each of A and B has been given a suitable opportunity to receive proper counselling about the implications of disclosure under subsection (2).
- (4) The Authority need not disclose any information under subsection (2) if it considers that the disclosure of information will lead to A or B identifying the donor unless—
- (a) the donor has consented to the donor's identity being disclosed to A or B, or
  - (b) were A or B to make a request under section 31ZA(2)(a), the Authority would be required by regulations under that provision to give A or B information which would identify the donor.
- (5) In this section—
- “relevant individual” has the same meaning as in section 31;
  - “the relevant statutory provisions” has the same meaning as in section 31ZA.

### **31ZF Power of Authority to keep voluntary contact register**

- (1) In this section and section 31ZG, a “voluntary contact register” means a register of persons who have expressed their wish to receive information about any person to whom they are genetically related as a consequence of the provision to any person of treatment services in the United Kingdom before 1 August 1991.
- (2) The Authority may—
- (a) set up a voluntary contact register in such manner as it thinks fit,
  - (b) keep a voluntary contact register in such manner as it thinks fit,
  - (c) determine criteria for eligibility for inclusion on the register and the particulars that may be included,

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- (d) charge a fee to persons who wish their particulars to be entered on the register,
  - (e) arrange for samples of the DNA of such persons to be analysed at their request,
  - (f) make such arrangements as it thinks fit for the disclosure of information on the register between persons who appear to the Authority to be genetically related, and
  - (g) impose such conditions as it thinks fit to prevent a person (“A”) from disclosing information to a person to whom A is genetically related (“B”) where that information would identify any person who is genetically related to both A and B.
- (3) The Authority may make arrangements with any person by whom a voluntary contact register is kept before the commencement of this section for the supply by that person to the Authority of the information contained in the register maintained by that person.

### **31ZG Financial assistance for person setting up or keeping voluntary contact register**

- (1) The Authority may, instead of keeping a voluntary contact register, give financial assistance to any person who sets up or keeps a voluntary contact register.
- (2) Financial assistance under subsection (1) may be given in any form, and in particular, may be given by way of—
- (a) grants,
  - (b) loans,
  - (c) guarantees, or
  - (d) incurring expenditure for the person assisted.
- (3) Financial assistance under subsection (1) may be given on such terms and conditions as the Authority considers appropriate.
- (4) A person receiving assistance under subsection (1) must comply with the terms and conditions on which it is given, and compliance may be enforced by the Authority.”

#### **Commencement Information**

- 16** S. 24 wholly in force at 1.10.2009; s. 24 not in force at Royal Assent see s. 68; s. 24 in force for certain purposes at 6.4.2009 by S.I. 2009/479, art. 5(d)(h) (with Sch.); s. 24 in force at 1.10.2009 otherwise by S.I. 2009/2232, art. 2(k)

## **25 Restrictions on disclosure of information**

For section 33 of the 1990 Act (restrictions on disclosure of information) substitute—

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### **“33A Disclosure of information**

- (1) No person shall disclose any information falling within section 31(2) which the person obtained (whether before or after the coming into force of section 24 of the Human Fertilisation and Embryology Act 2008) in the person's capacity as—
  - (a) a member or employee of the Authority,
  - (b) any person exercising functions of the Authority by virtue of section 8B or 8C of this Act (including a person exercising such functions by virtue of either of those sections as a member of staff or as an employee),
  - (c) any person engaged by the Authority to provide services to the Authority,
  - (d) any person employed by, or engaged to provide services to, a person mentioned in paragraph (c),
  - (e) a person to whom a licence applies,
  - (f) a person to whom a third party agreement applies, or
  - (g) a person to whom directions have been given.
- (2) Subsection (1) does not apply where—
  - (a) the disclosure is made to a person as a member or employee of the Authority or as a person exercising functions of the Authority as mentioned in subsection (1)(b),
  - (b) the disclosure is made to or by a person falling within subsection (1)(c) for the purpose of the provision of services which that person is engaged to provide to the Authority,
  - (c) the disclosure is made by a person mentioned in subsection (1)(d) for the purpose of enabling a person falling within subsection (1)(c) to provide services which that person is engaged to provide to the Authority,
  - (d) the disclosure is made to a person to whom a licence applies for the purpose of that person's functions as such,
  - (e) the disclosure is made to a person to whom a third party agreement applies for the purpose of that person's functions under that agreement,
  - (f) the disclosure is made in pursuance of directions given by virtue of section 24,
  - (g) the disclosure is made so that no individual can be identified from the information,
  - (h) the disclosure is of information other than identifying donor information and is made with the consent required by section 33B,
  - (i) the disclosure—
    - (i) is made by a person who is satisfied that it is necessary to make the disclosure to avert an imminent danger to the health of an individual (“P”),
    - (ii) is of information falling within section 31(2)(a) which could be disclosed by virtue of paragraph (h) with P's consent or could be disclosed to P by virtue of subsection (5), and

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- (iii) is made in circumstances where it is not reasonably practicable to obtain P's consent,
  - (j) the disclosure is of information which has been lawfully made available to the public before the disclosure is made,
  - (k) the disclosure is made in accordance with sections 31ZA to 31ZE,
  - (l) the disclosure is required or authorised to be made—
    - (i) under regulations made under section 33D, or
    - (ii) in relation to any time before the coming into force of the first regulations under that section, under regulations made under section 251 of the National Health Service Act 2006,
  - (m) the disclosure is made by a person acting in the capacity mentioned in subsection (1)(a) or (b) for the purpose of carrying out the Authority's duties under section 8A,
  - (n) the disclosure is made by a person acting in the capacity mentioned in subsection (1)(a) or (b) in pursuance of an order of a court under section 34 or 35,
  - (o) the disclosure is made by a person acting in the capacity mentioned in subsection (1)(a) or (b) to the Registrar General in pursuance of a request under section 32,
  - (p) the disclosure is made by a person acting in the capacity mentioned in subsection (1)(a) or (b) to any body or person discharging a regulatory function for the purpose of assisting that body or person to carry out that function,
  - (q) the disclosure is made for the purpose of establishing in any proceedings relating to an application for an order under subsection (1) of section 54 of the Human Fertilisation and Embryology Act 2008 whether the condition specified in paragraph (a) or (b) of that subsection is met,
  - (r) the disclosure is made under section 3 of the Access to Health Records Act 1990,
  - (s) the disclosure is made under Article 5 of the Access to Health Records (Northern Ireland) Order 1993, or
  - (t) the disclosure is made necessarily for—
    - (i) the purpose of the investigation of any offence (or suspected offence), or
    - (ii) any purpose preliminary to proceedings, or for the purposes of, or in connection with, any proceedings.
- (3) Subsection (1) does not apply to the disclosure of information in so far as—
- (a) the information identifies a person who, but for sections 27 to 29 of this Act or sections 33 to 47 of the Human Fertilisation and Embryology Act 2008, would or might be a parent of a person who instituted proceedings under section 1A of the Congenital Disabilities (Civil Liability) Act 1976, and
  - (b) the disclosure is made for the purpose of defending such proceedings, or instituting connected proceedings for compensation against that parent.

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- (4) Paragraph (t) of subsection (2), so far as relating to disclosure for the purpose of the investigation of an offence or suspected offence, or for any purpose preliminary to, or in connection with proceedings, does not apply—
- (a) to disclosure of identifying donor information, or
  - (b) to disclosure, in circumstances in which subsection (1) of section 34 of this Act applies, of information relevant to the determination of the question mentioned in that subsection, made by any person acting in a capacity mentioned in any of paragraphs (c) to (g) of subsection (1).
- (5) Subsection (1) does not apply to the disclosure to any individual of information which—
- (a) falls within subsection (2) of section 31 of this Act by virtue of any of paragraphs (a) to (e) of that subsection, and
  - (b) relates only to that individual or, in the case of an individual who is treated together with, or gives a notice under section 37 or 44 of the Human Fertilisation and Embryology Act 2008 in respect of, another, only to that individual and that other.
- (6) In subsection (2)—
- (a) in paragraph (p) “regulatory function” has the same meaning as in section 32 of the Legislative and Regulatory Reform Act 2006, and
  - (b) in paragraph (t) references to “proceedings” include any formal procedure for dealing with a complaint.
- (7) In this section “identifying donor information” means information enabling a person to be identified as a person whose gametes were used in accordance with consent given under paragraph 5 of Schedule 3 for the purposes of treatment services or non-medical fertility services in consequence of which an identifiable individual was, or may have been, born.

### **33B Consent required to authorise certain disclosures**

- (1) This section has effect for the purposes of section 33A(2)(h).
- (2) Subject to subsection (5), the consent required by this section is the consent of each individual who can be identified from the information.
- (3) Consent in respect of a person who has not attained the age of 18 years (“C”) may be given—
- (a) by C, in a case where C is competent to deal with the issue of consent, or
  - (b) by a person having parental responsibility for C, in any other case.
- (4) Consent to disclosure given at the request of another shall be disregarded unless, before it is given, the person requesting it takes reasonable steps to explain to the individual from whom it is requested the implications of compliance with the request.
- (5) In the case of information which shows that any identifiable individual (“A”) was, or may have been, born in consequence of treatment services, the consent required by this section does not include A's consent if the

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disclosure is necessarily incidental to the disclosure of information falling within section 31(2)(a).

- (6) The reference in subsection (3) to parental responsibility is—
- (a) in relation to England and Wales, to be read in accordance with the Children Act 1989;
  - (b) in relation to Northern Ireland, to be read in accordance with the Children (Northern Ireland) Order 1995;
  - (c) in relation to Scotland, to be read as a reference to parental responsibilities and parental rights within the meaning of the Children (Scotland) Act 1995.

### **33C Power to provide for additional exceptions from section 33A(1)**

- (1) Regulations may provide for additional exceptions from section 33A(1).
- (2) No exception may be made under this section for—
- (a) disclosure of a kind mentioned in paragraph (a) or (b) of subsection (4) of section 33A, or
  - (b) disclosure in circumstances in which section 32 of this Act applies of information having the tendency mentioned in subsection (2) of that section, made by any person acting in a capacity mentioned in any of paragraphs (c) to (g) of subsection (1) of section 33A.

### **33D Disclosure for the purposes of medical or other research**

- (1) Regulations may—
- (a) make such provision for and in connection with requiring or regulating the processing of protected information for the purposes of medical research as the Secretary of State considers is necessary or expedient in the public interest or in the interests of improving patient care, and
  - (b) make such provision for and in connection with requiring or regulating the processing of protected information for the purposes of any other research as the Secretary of State considers is necessary or expedient in the public interest.
- (2) Regulations under subsection (1) may, in particular, make provision—
- (a) for requiring or authorising the disclosure or other processing of protected information to or by persons of any prescribed description subject to compliance with any prescribed conditions (including conditions requiring prescribed undertakings to be obtained from such persons as to the processing of such information),
  - (b) for securing that, where prescribed protected information is processed by a person in accordance with the regulations, anything done by that person in so processing the information must be taken to be lawfully done despite any obligation of confidence owed by the person in respect of it,
  - (c) for requiring fees of a prescribed amount to be paid to the Authority in prescribed circumstances by persons in relation to the disclosure to those persons of protected information under those regulations,



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- (d) for the establishment of one or more bodies to exercise prescribed functions in relation to the processing of protected information under those regulations,
  - (e) as to the membership and proceedings of any such body, and
  - (f) as to the payment of remuneration and allowances to any member of any such body and the reimbursement of expenses.
- (3) Where regulations under subsection (1) require or regulate the processing of protected information for the purposes of medical research, such regulations may enable any approval given under regulations made under section 251 of the National Health Service Act 2006 (control of patient information) to have effect for the purposes of the regulations under subsection (1) in their application to England and Wales.
- (4) Subsections (1) to (3) are subject to subsections (5) to (8).
- (5) Regulations under subsection (1) may not make any provision requiring or authorising the disclosure or other processing, for any purpose, of protected information, where that information is information from which an individual may be identified, if it would be reasonably practicable to achieve that purpose otherwise than pursuant to such regulations, having regard to the cost of and technology available for achieving that purpose.
- (6) Regulations under this section may not make provision for or in connection with the processing of protected information in a manner inconsistent with any provision made by or under the Data Protection Act 1998.
- (7) Subsection (6) does not affect the operation of provisions made under subsection (2)(b).
- (8) Before making any regulations under this section the Secretary of State shall consult such bodies appearing to the Secretary of State to represent the interests of those likely to be affected by the regulations as the Secretary of State considers appropriate.
- (9) In this section—
- “prescribed” means prescribed by regulations made by virtue of this section,
  - “processing”, in relation to information, means the use, disclosure, or obtaining of the information or the doing of such other things in relation to it as may be prescribed for the purposes of this definition, and
  - “protected information” means information falling within section 31(2).”

#### Commencement Information

- I7** S. 25 wholly in force at 6.4.2010; s. 25 not in force at Royal Assent see s. 68; s. 25 in force for certain purposes at 6.4.2009 by S.I. 2009/479, art. 5(e)(h) (with Sch.); s. 25 in force at 1.10.2009 for certain further purposes by S.I. 2009/2232, art. 2(I) (with art. 4); s. 25 in force at 6.4.2010 otherwise by S.I. 2010/987, art. 2(a)

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### *Mitochondrial donation*

#### **26 Mitochondrial donation**

After section 35 of the 1990 Act insert—

#### *“Mitochondrial donation*

##### **35A Mitochondrial donation**

- (1) Regulations may provide for any of the relevant provisions to have effect subject to specified modifications in relation to cases where—
- (a) an egg which is a permitted egg for the purposes of section 3(2) by virtue of regulations made under section 3ZA(5), or
  - (b) an embryo which is a permitted embryo for those purposes by virtue of such regulations,
- has been created from material provided by two women.
- (2) In this section “the relevant provisions” means—
- (a) the following provisions of this Act—
    - (i) section 13(6C) (information whose provision to prospective parents is required by licence condition),
    - (ii) section 31 (register of information),
    - (iii) sections 31ZA to 31ZE (provision of information), and
    - (iv) Schedule 3 (consents to use or storage of gametes, embryos or human admixed embryos etc.), and
  - (b) section 54 of the Human Fertilisation and Embryology Act 2008 (parental orders).”

#### **Commencement Information**

- I8** S. 26 wholly in force at 6.4.2010; s. 26 not in force at Royal assent see s. 68; s. 26 in force for certain purposes at 6.4.2009 by S.I. 2009/479, art. 5(h) (with Sch.); s. 26 in force for certain further purposes at 1.10.2009 by S.I. 2009/2232, art. 2(m); s. 26 in force at 6.4.2010 otherwise by S.I. 2010/987, art. 2(b)

### *Miscellaneous*

VALID FROM 01/10/2009

#### **27 Fees**

After section 35A of the 1990 Act (as inserted by section 26 above) insert—

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## “Fees

### 35B Fees

- (1) The Authority may charge a fee in respect of any of the following—
  - (a) an application for a licence,
  - (b) the grant or renewal of a licence,
  - (c) an application for the revocation or variation of a licence, or
  - (d) the exercise by the Authority of any other function conferred on it by or under this Act or by or under any other enactment—
    - (i) in relation to a licence,
    - (ii) in relation to premises which are or have been premises to which a licence relates,
    - (iii) in relation to premises which are or have been relevant third party premises in relation to a licence, or
    - (iv) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises.
- (2) The amount of any fee charged by virtue of subsection (1) is to be fixed in accordance with a scheme made by the Authority with the approval of the Secretary of State and the Treasury.
- (3) In fixing the amount of any fee to be charged by virtue of that subsection, the Authority may have regard to the costs incurred by it—
  - (a) in exercising the functions conferred on it by or under this Act (apart from sections 31ZA to 31ZG and 33D), and
  - (b) in exercising any other function conferred on it by or under any other enactment.
- (4) The Authority may also charge such fee as it thinks fit in respect of any of the following—
  - (a) the giving of notice under section 31ZA(1) or 31ZB(1), or
  - (b) the provision of information under section 31ZA, 31ZB or 31ZE.
- (5) In fixing the amount of any fee to be charged by virtue of subsection (4) the Authority may have regard to the costs incurred by it in exercising the function to which the fee relates.
- (6) When exercising its power to charge fees under section 8(2), 31ZF(2) (d) or this section, the Authority may fix different fees for different circumstances.”

VALID FROM 01/10/2009

## 28 Inspection, entry, search and seizure

- (1) Before section 39 of the 1990 Act (but after the heading “Enforcement” immediately before that section) insert—

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### “38A Inspection, entry, search and seizure

- (1) Schedule 3B (which makes provisions about inspection, entry, search and seizure) has effect.
- (2) Nothing in this Act makes it unlawful for a member or employee of the Authority to keep any embryo, human admixed embryo or gametes in pursuance of that person's functions as such.”
- (2) After Schedule 3A to the 1990 Act insert the Schedule set out in Schedule 5 to this Act (inspection, entry, search and seizure).
- (3) Section 39 of the 1990 Act (powers of members and employees of Authority) and section 40 of that Act (power to enter premises) (which are superseded by the amendments made by subsection (2)) cease to have effect.

VALID FROM 01/10/2009

## 29 Offences under the 1990 Act

- (1) Section 41 of the 1990 Act (offences) is amended as follows.
- (2) In subsection (1)(a), for “4(1)(c)” substitute “ 4A(1) or (2) ”.
- (3) In subsection (2)—
  - (a) after paragraph (a) insert—
 

“(aa) contravenes section 3(1B) of this Act,”,
  - (b) after paragraph (ba) insert—
 

“(bb) contravenes section 4(1A) of this Act,” and
  - (c) in paragraph (d), for “section 24(7)(a)” substitute “ section 24(5D) ”.
- (4) In subsection (4), omit “, other than an offence to which subsection (4B) applies,”.
- (5) In subsection (5), for “section 33” substitute “ section 33A ”.
- (6) In subsection (7), for “section 10(2)(a)” substitute “ section 19B(3)(a) or 20B(3)(e) ”.
- (7) In subsection (8)—
  - (a) for “or the nominal licensee” substitute “ or the holder of the licence ”, and
  - (b) for “or embryos” substitute “ , embryos or human admixed embryos ”.
- (8) In subsection (9), omit “(6),”.
- (9) For subsection (10) substitute—
 

“(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—

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- (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 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.”

(10) Omit subsections (2A), (4A), (4B) and (6).

(11) Section 41(2) of the 1990 Act as amended by subsection (3) is to be treated as a relevant enactment for the purposes of section 282 of the Criminal Justice Act 2003 (c. 44) (increase in maximum term that may be imposed on summary conviction of offence triable either way).

### 30 Regulations under the 1990 Act

(1) Section 45 of the 1990 Act (regulations) is amended as follows.

(2) After subsection (1) insert—

“(1A) Subsection (1) does not enable the Secretary of State to make regulations by virtue of section 19(6) (which confers regulation-making powers on the Authority).”

(3) In subsection (2), after “regulations” insert “ under this Act ”.

(4) For subsection (3) substitute—

“(3) The power to make regulations under this Act may be exercised—

- (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case, and
- (b) so as to make, as respects the cases in relation to which it is exercised—
  - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);

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- (ii) the same provision for all cases in relation to which the power is exercised, or different provision as respects the same case or class of case for different purposes;
- (iii) any such provision either unconditionally, or subject to any specified condition.

(3A) Any power of the Secretary of State or the Authority to make regulations under this Act includes power to make such transitional, incidental or supplemental provision as the Secretary of State or the Authority considers appropriate.”

(5) For subsection (4) substitute—

“(4) The Secretary of State shall not make regulations by virtue of any of the provisions specified in subsection (4A) unless a draft has been laid before and approved by a resolution of each House of Parliament.

(4A) Those provisions are—

- section 1(6);
- section 3(3)(c);
- section 3ZA(5);
- section 4(2) or (3);
- section 4A(5) or (11);
- section 20A(3);
- section 20B(2);
- section 24(4B);
- section 31ZA(2)(a);
- section 33C;
- section 33D;
- section 35A;
- section 43;
- paragraph 1(1)(g), 1ZC or 3A(1)(c) of Schedule 2.”

(6) In subsection (5), after “regulations” insert “ made by the Secretary of State ”.

VALID FROM 01/10/2009

### **31 Power to make consequential provision**

After section 45 of the 1990 Act (regulations) insert—

#### **“45A Power to make consequential provision**

- (1) The Secretary of State may by order make such provision modifying any provision made by or under any enactment as the Secretary of State considers necessary or expedient in consequence of any provision made by regulations under any of the relevant provisions of this Act.
- (2) For the purposes of subsection (1), “the relevant provisions of this Act” are—

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- (a) section 1(6) (power to include things within the meaning of “embryo” and “gametes” etc.);
  - (b) section 4A(11) (power to amend definition of “human admixed embryo” and other terms).
- (3) Before making an order under this section containing provision which would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament, the Secretary of State must consult the Scottish Ministers.
- (4) Before making an order under this section containing provision which would be within the legislative competence of the National Assembly for Wales if it were included in a Measure of the Assembly (or, if the order is made after the Assembly Act provisions come into force, an Act of the Assembly), the Secretary of State must consult the Welsh Ministers.
- (5) Before making an order under this section containing provision which would if included in an Act of the Northern Ireland Assembly, be within the legislative competence of that Assembly, the Secretary of State must consult the Department of Health, Social Services and Public Safety.
- (6) In this section—
- “enactment” means—
    - (a) an Act of Parliament (other than this Act),
    - (b) an Act of the Scottish Parliament,
    - (c) a Measure or Act of the National Assembly for Wales, or
    - (d) Northern Ireland legislation,
- whenever passed or made;
- “modify” includes amend, add to, revoke or repeal;
- “the Assembly Act provisions” has the meaning given by section 103(8) of the Government of Wales Act 2006.”

VALID FROM 01/10/2009

## 32 Orders under the 1990 Act

After section 45A (inserted by section 31 above) insert—

### “45B Orders

- (1) The power to make an order under section 8C(1)(c) or 45A of this Act shall be exercisable by statutory instrument.
- (2) The power to make an order under section 8C(1)(c) or 45A of this Act includes power to make such transitional, incidental or supplemental provision as the Secretary of State considers appropriate.
- (3) A statutory instrument containing an order made by the Secretary of State by virtue of section 8C(1)(c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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(4) The Secretary of State shall not make an order by virtue of section 45A unless a draft has been laid before and approved by a resolution of each House of Parliament.”

VALID FROM 06/04/2009

## PART 2

### PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION

#### *Meaning of “mother”*

#### **33 Meaning of “mother”**

- (1) The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child.
- (2) Subsection (1) does not apply to any child to the extent that the child is treated by virtue of adoption as not being the woman's child.
- (3) Subsection (1) 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.

#### **Modifications etc. (not altering text)**

- C1** [S. 33\(2\)](#) modified (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), reg. 5, [Sch. 4](#)

#### *Application of sections 35 to 47*

#### **34 Application of sections 35 to 47**

- (1) Sections 35 to 47 apply, in the case of a child who is being or has been carried by a woman (referred to in those sections as “W”) as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination, to determine who is to be treated as the other parent of the child.
- (2) Subsection (1) has effect subject to the provisions of sections 39, 40 and 46 limiting the purposes for which a person is treated as the child's other parent by virtue of those sections.

#### *Meaning of “father”*

#### **35 Woman married at time of treatment**

- (1) If—



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- (a) at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination, W 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 section 38(2) to (4), the other party to the marriage is to 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 artificial insemination (as the case may be).

- (2) This section applies whether W was in the United Kingdom or elsewhere at the time mentioned in subsection (1)(a).

### **36 Treatment provided to woman where agreed fatherhood conditions apply**

If no man is treated by virtue of section 35 as the father of the child and no woman is treated by virtue of section 42 as a parent of the child but—

- (a) the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, in the course of treatment services provided in the United Kingdom by a person to whom a licence applies,
- (b) at the time when the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, the agreed fatherhood conditions (as set out in section 37) were satisfied in relation to a man, in relation to treatment provided to W under the licence,
- (c) the man remained alive at that time, and
- (d) the creation of the embryo carried by W was not brought about with the man's sperm,

then, subject to section 38(2) to (4), the man is to be treated as the father of the child.

### **37 The agreed fatherhood conditions**

- (1) The agreed fatherhood conditions referred to in section 36(b) are met in relation to a man (“M”) in relation to treatment provided to W under a licence if, but only if,—
  - (a) M has given the person responsible a notice stating that he consents to being treated as the father of any child resulting from treatment provided to W under the licence,
  - (b) W has given the person responsible a notice stating that she consents to M being so treated,
  - (c) neither M nor W has, since giving notice under paragraph (a) or (b), given the person responsible notice of the withdrawal of M's or W's consent to M being so treated,
  - (d) W has not, since the giving of the notice under paragraph (b), given the person responsible—
    - (i) a further notice under that paragraph stating that she consents to another man being treated as the father of any resulting child, or
    - (ii) a notice under section 44(1)(b) stating that she consents to a woman being treated as a parent of any resulting child, and
  - (e) W and M are not within prohibited degrees of relationship in relation to each other.

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- (2) A notice under subsection (1)(a), (b) or (c) must be in writing and must be signed by the person giving it.
- (3) A notice under subsection (1)(a), (b) or (c) by a person (“S”) who is unable to sign because of illness, injury or physical disability is to be taken to comply with the requirement of subsection (2) as to signature if it is signed at the direction of S, in the presence of S and in the presence of at least one witness who attests the signature.

### **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, that a child is the legitimate child of the parties to a marriage.
- (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.
- (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.

#### **Modifications etc. (not altering text)**

- C2** [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](#)

### **39 Use of sperm, or transfer of embryo, after death of man providing sperm**

- (1) If—
  - (a) the child has been carried by W as a 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 W 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 W after his death,
  - (c) 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 W or (as the case may be) to the placing in W 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 (3) as the father of any resulting child,
  - (d) 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 man to be treated for the purpose mentioned in subsection (3) as the father of the child, and
  - (e) 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 38(2) or (3), or

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(ii) as a parent of the child by virtue of section 42 or 43 or by virtue of adoption,

then the man is to be treated for the purpose mentioned in subsection (3) as the father of the child.

- (2) Subsection (1) applies whether W was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination.
- (3) The purpose referred to in subsection (1) is the purpose of enabling the man's particulars to be entered as the particulars of the child's father in a relevant register of births.
- (4) In the application of this section to Scotland, for any reference to a period of 42 days there is substituted a reference to a period of 21 days.

#### **40 Embryo transferred after death of husband etc. who did not provide sperm**

(1) If—

- (a) the child has been carried by W as a result of the placing in her of an embryo,
- (b) the embryo was created at a time when W 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 W,
- (e) the other party to the marriage consented in writing (and did not withdraw the consent)—
- (i) to the placing of the embryo in W after his death, and
- (ii) to being treated for the purpose mentioned in subsection (4) as the father of any resulting child,
- (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 man to be treated for the purpose mentioned in subsection (4) as the father 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 38(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 man is to be treated for the purpose mentioned in subsection (4) as the father of the child.

(2) If—

- (a) the child has been carried by W as a 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) a man consented in writing (and did not withdraw the consent)—
- (i) to the placing of the embryo in W after his death, and
- (ii) to being treated for the purpose mentioned in subsection (4) as the father of any resulting child,
- (d) the creation of the embryo was not brought about with the sperm of that man,

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- (e) the man died before the placing of the embryo in W,
- (f) immediately before the man's death, the agreed fatherhood conditions set out in section 37 were met in relation to the man in relation to treatment proposed to be provided to W in the United Kingdom by a person to whom a licence applies,
- (g) 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 man to be treated for the purpose mentioned in subsection (4) as the father of the child, and
- (h) 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 38(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 man is to be treated for the purpose mentioned in subsection (4) as the father 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 man's particulars to be entered as the particulars of the child's father in a relevant register of births.
- (5) In the application of this section to Scotland, for any reference to a period of 42 days there is substituted a reference to a period of 21 days.

#### **41 Persons not to be treated as father**

- (1) Where the sperm of a man who had given such consent as is required by paragraph 5 of Schedule 3 to the 1990 Act (consent to use of gametes for purposes of treatment services or non-medical fertility services) was used for a purpose for which such consent was required, he is not to be treated as the father of the child.
- (2) Where the sperm of a man, or an embryo the creation of which was brought about with his sperm, was used after his death, he is not, subject to section 39, to be treated as the father of the child.
- (3) Subsection (2) applies whether W was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination.

*Cases in which woman to be other parent*

#### **42 Woman in civil partnership at time of treatment**

- (1) If at the time of the placing in her of the embryo or the sperm and eggs or of her artificial insemination, W was a party to a civil partnership, then subject to section 45(2) to (4), the other party to the civil partnership is to be treated as a parent of the child unless it is shown that she did not consent to the placing in W of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).
- (2) This section applies whether W was in the United Kingdom or elsewhere at the time mentioned in subsection (1).

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#### **43 Treatment provided to woman who agrees that second woman to be parent**

If no man is treated by virtue of section 35 as the father of the child and no woman is treated by virtue of section 42 as a parent of the child but—

- (a) the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, in the course of treatment services provided in the United Kingdom by a person to whom a licence applies,
- (b) at the time when the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, the agreed female parenthood conditions (as set out in section 44) were met in relation to another woman, in relation to treatment provided to W under that licence, and
- (c) the other woman remained alive at that time,

then, subject to section 45(2) to (4), the other woman is to be treated as a parent of the child.

#### **44 The agreed female parenthood conditions**

(1) The agreed female parenthood conditions referred to in section 43(b) are met in relation to another woman (“P”) in relation to treatment provided to W under a licence if, but only if,—

- (a) P has given the person responsible a notice stating that P consents to P being treated as a parent of any child resulting from treatment provided to W under the licence,
- (b) W has given the person responsible a notice stating that W agrees to P being so treated,
- (c) neither W nor P has, since giving notice under paragraph (a) or (b), given the person responsible notice of the withdrawal of P’s or W’s consent to P being so treated,
- (d) W has not, since the giving of the notice under paragraph (b), given the person responsible—
  - (i) a further notice under that paragraph stating that W consents to a woman other than P being treated as a parent of any resulting child, or
  - (ii) a notice under section 37(1)(b) stating that W consents to a man being treated as the father of any resulting child, and
- (e) W and P are not within prohibited degrees of relationship in relation to each other.

(2) A notice under subsection (1)(a), (b) or (c) must be in writing and must be signed by the person giving it.

(3) A notice under subsection (1)(a), (b) or (c) by a person (“S”) who is unable to sign because of illness, injury or physical disability is to be taken to comply with the requirement of subsection (2) as to signature if it is signed at the direction of S, in the presence of S and in the presence of at least one witness who attests the signature.

#### **45 Further provision relating to sections 42 and 43**

(1) Where a woman is treated by virtue of section 42 or 43 as a parent of the child, no man is to be treated as the father of the child.

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- (2) In England and Wales and Northern Ireland, sections 42 and 43 do not affect any presumption, applying by virtue of the rules of common law, that a child is the legitimate child of the parties to a marriage.
- (3) In Scotland, sections 42 and 43 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.
- (4) Sections 42 and 43 do not apply to any child to the extent that the child is treated by virtue of adoption as not being the woman's child.

#### **46 Embryo transferred after death of civil partner or intended female 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,
  - (c) the other party to the civil partnership died before the placing of the embryo in W,
  - (d) the other party to the civil partnership 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 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
    - (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 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

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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.

#### **47 Woman not to be other parent merely because of egg donation**

A woman is not to be treated as the parent of a child whom she is not carrying and has not carried, except where she is so treated—

- (a) by virtue of section 42 or 43, or
- (b) by virtue of section 46 (for the purpose mentioned in subsection (4) of that section), or
- (c) by virtue of adoption.

#### *Effect of sections 33 to 47*

#### **48 Effect of sections 33 to 47**

- (1) Where by virtue of section 33, 35, 36, 42 or 43 a person is to be treated as the mother, father or parent of a child, that person is to be treated in law as the mother, father or parent (as the case may be) of the child for all purposes.
- (2) Where by virtue of section 33, 38, 41, 45 or 47 a person is not to be treated as a parent of the child, that person is to be treated in law as not being a parent of the child for any purpose.
- (3) Where section 39(1) or 40(1) or (2) applies, the deceased man—
  - (a) is to be treated in law as the father of the child for the purpose mentioned in section 39(3) or 40(4), but
  - (b) is to be treated in law as not being the father of the child for any other purpose.
- (4) Where section 46(1) or (2) applies, the deceased woman—

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- (a) is to be treated in law as a parent of the child for the purpose mentioned in section 46(4), but
  - (b) is to be treated in law as not being a parent of the child for any other purpose.
- (5) Where any of subsections (1) to (4) has effect, references to any relationship between two people in any enactment, deed or other instrument or document (whenever passed or made) are to be read accordingly.
- (6) In relation to England and Wales and Northern Ireland, a child who—
- (a) has a parent by virtue of section 42, or
  - (b) has a parent by virtue of section 43 who is at any time during the period beginning with the time mentioned in section 43(b) and ending with the time of the child's birth a party to a civil partnership with the child's mother,
- is the legitimate child of the child's parents.
- (7) In relation to England and Wales and Northern Ireland, nothing in the provisions of section 33(1) or sections 35 to 47, read with this section—
- (a) affects the succession to any dignity or title of honour or renders any person capable of succeeding to or transmitting a right to succeed to any such dignity or title, or
  - (b) affects the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any dignity or title of honour.
- (8) In relation to Scotland—
- (a) those provisions do not apply to any title, coat of arms, honour or dignity transmissible on the death of its holder or affect the succession to any such title, coat of arms or dignity or its devolution, and
  - (b) where the terms of any deed provide that any property or interest in property is to devolve along with a title, coat of arms, honour or dignity, nothing in those provisions is to prevent that property or interest from so devolving.

*References to parties to marriage or civil partnership*

**49 Meaning of references to parties to a marriage**

- (1) The references in sections 35 to 47 to the parties to a marriage at any 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 those sections it is to be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the marriage was valid.
- (2) In subsection (1)(a) “judicial separation” includes a legal separation obtained in a country outside the British Islands and recognised in the United Kingdom.

**50 Meaning of references to parties to a civil partnership**

- (1) The references in sections 35 to 47 to the parties to a civil partnership at any time there referred to—



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- (a) are to the parties to a civil partnership subsisting at that time, unless a separation order was then in force, but
  - (b) include the parties to a void civil partnership if either or both of them reasonably believed at that time that the civil partnership was valid; and for the purposes of those sections it is to be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the civil partnership was valid.
- (2) The reference in section 48(6)(b) to a civil partnership includes a reference to a void civil partnership if either or both of the parties reasonably believed at the time when they registered as civil partners of each other that the civil partnership was valid; and for this purpose it is to be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the civil partnership was valid.
- (3) In subsection (1)(a), “separation order” means—
  - (a) a separation order under section 37(1)(d) or 161(1)(d) of the Civil Partnership Act 2004 (c. 33),
  - (b) a decree of separation under section 120(2) of that Act, or
  - (c) a legal separation obtained in a country outside the United Kingdom and recognised in the United Kingdom.

*Further provision about registration by virtue of section 39, 40 or 46*

## **51 Meaning of “relevant register of births”**

For the purposes of this Part a “relevant register of births”, in relation to a birth, is whichever of the following is relevant—

- (a) a register of live-births or still-births kept under the Births and Deaths Registration Act 1953 (c. 20),
- (b) a register of births or still-births kept under the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49), or
- (c) a register of live-births or still-births kept under the Births and Deaths Registration (Northern Ireland) Order 1976 (S.I. 1976/1041 (N.I. 14)).

## **52 Late election by mother with consent of Registrar General**

- (1) The requirement under section 39(1), 40(1) or (2) or 46(1) or (2) 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) is nevertheless to 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 (2).
- (2) The Registrar General may at any time consent to the making of an election after the end of the period mentioned in subsection (1) 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.
- (3) In this section “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 may be) the Registrar General for Northern Ireland.

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**Changes to legislation:** Human Fertilisation and Embryology Act 2008 is up to date with all changes known to be in force on or before 12 March 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)

*Interpretation of references to father etc. where woman is other parent*

**53 Interpretation of references to father etc.**

- (1) Subsections (2) and (3) have effect, subject to subsections (4) and (6), for the interpretation of any enactment, deed or any other instrument or document (whenever passed or made).
- (2) Any reference (however expressed) to the father of a child who has a parent by virtue of section 42 or 43 is to be read as a reference to the woman who is a parent of the child by virtue of that section.
- (3) Any reference (however expressed) to evidence of paternity is, in relation to a woman who is a parent by virtue of section 42 or 43, to be read as a reference to evidence of parentage.
- (4) This section does not affect the interpretation of the enactments specified in subsection (5) (which make express provision for the case where a child has a parent by virtue of section 42 or 43).
- (5) Those enactments are—
  - (a) the Legitimacy Act (Northern Ireland) 1928 (c. 5 (N.I.)),
  - (b) the Schedule to the Population (Statistics) Act 1938 (c. 12),
  - (c) the Births and Deaths Registration Act 1953 (c. 20),
  - (d) the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 (c. 58),
  - (e) Part 2 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49),
  - (f) the Congenital Disabilities (Civil Liability) Act 1976 (c. 28),
  - (g) the Legitimacy Act 1976 (c. 31),
  - (h) the Births and Deaths Registration (Northern Ireland) Order 1976 (S.I. 1976/1041 (N.I. 14)),
  - (i) the British Nationality Act 1981 (c. 61),
  - (j) the Family Law Reform Act 1987 (c. 42),
  - (k) Parts 1 and 2 of the Children Act 1989 (c. 41),
  - (l) Part 1 of the Children (Scotland) Act 1995 (c. 36),
  - (m) section 1 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39), and
  - (n) Parts 2, 3 and 14 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).
- (6) This section does not affect the interpretation of references that fall to be read in accordance with section 1(2)(a) or (b) of the Family Law Reform Act 1987 or Article 155(2)(a) or (b) of the Children (Northern Ireland) Order 1995 (references to a person whose father and mother were, or were not, married to each other at the time of the person's birth).

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## Parental orders

### 54 Parental orders

- (1) On an application made by two people (“the applicants”), the court may make an order providing for a child to be treated in law as the child of the applicants if—
  - (a) the child has been carried by a woman who is not one of the applicants, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination,
  - (b) the gametes of at least one of the applicants were used to bring about the creation of the embryo, and
  - (c) the conditions in subsections (2) to (8) are satisfied.
- (2) The applicants must be—
  - (a) husband and wife,
  - (b) civil partners of each other, or
  - (c) two persons who are living as partners in an enduring family relationship and are not within prohibited degrees of relationship in relation to each other.
- (3) Except in a case falling within subsection (11), the applicants must apply for the order during the period of 6 months beginning with the day on which the child is born.
- (4) At the time of the application and the making of the order—
  - (a) the child's home must be with the applicants, and
  - (b) either or both of the applicants must be domiciled in the United Kingdom or in the Channel Islands or the Isle of Man.
- (5) At the time of the making of the order both the applicants must have attained the age of 18.
- (6) The court must be satisfied that both—
  - (a) the woman who carried the child, and
  - (b) any other person who is a parent of the child but is not one of the applicants (including any man who is the father by virtue of section 35 or 36 or any woman who is a parent by virtue of section 42 or 43),have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.
- (7) Subsection (6) does not require the agreement of a person who cannot be found or is incapable of giving agreement; and the agreement of the woman who carried the child is ineffective for the purpose of that subsection if given by her less than six weeks after the child's birth.
- (8) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by either of the applicants for or in consideration of—
  - (a) the making of the order,
  - (b) any agreement required by subsection (6),
  - (c) the handing over of the child to the applicants, or
  - (d) the making of arrangements with a view to the making of the order,unless authorised by the court.

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- (9) For the purposes of an application under this section—
- (a) in relation to England and Wales, section 92(7) to (10) of, and Part 1 of Schedule 11 to, the Children Act 1989 (c. 41) (jurisdiction of courts) apply for the purposes of this section to determine the meaning of “the court” as they apply for the purposes of that Act and proceedings on the application are to be “family proceedings” for the purposes of that Act,
  - (b) in relation to Scotland, “the court” means the Court of Session or the sheriff court of the sheriffdom within which the child is, and
  - (c) in relation to Northern Ireland, “the court” means the High Court or any county court within whose division the child is.
- (10) Subsection (1)(a) 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.
- (11) An application which—
- (a) relates to a child born before the coming into force of this section, and
  - (b) is made by two persons who, throughout the period applicable under subsection (2) of section 30 of the 1990 Act, were not eligible to apply for an order under that section in relation to the child as husband and wife,
- may be made within the period of six months beginning with the day on which this section comes into force.

#### Modifications etc. (not altering text)

- C3** S. 54: power to modify conferred (6.4.2010) by [Human Fertilisation and Embryology Act 1990 \(c. 37\)](#), s. 35A (as inserted by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), **ss. 26, 68**); [S.I. 2010/987](#), **art. 2(b)**

#### Commencement Information

- I9** S. 54 wholly in force at 6.4.2010; s. 54 not in force at Royal assent see s. 68; s. 54 in force for certain purposes at 6.4.2009 by [S.I. 2009/479](#), **art. 5(h)** (with [Sch.](#)); s. 54 in force for certain further purposes at 1.10.2009 by [S.I. 2009/2232](#), **art. 2(q)**; s. 54 in force at 6.4.2010 otherwise by [S.I. 2010/987](#), **art. 2(c)**

VALID FROM 01/10/2009

## 55 Parental orders: supplementary provision

- (1) The Secretary of State may by regulations provide—
- (a) for any provision of the enactments about adoption to have effect, with such modifications (if any) as may be specified in the regulations, in relation to orders under section 54, and applications for such orders, as it has effect in relation to adoption, and applications for adoption orders, and
  - (b) for references in any enactment to adoption, an adopted child or an adoptive relationship to be read (respectively) as references to the effect of an order under section 54, a child to whom such an order applies and a relationship arising by virtue of the enactments about adoption, as applied by the

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regulations, and for similar expressions in connection with adoption to be read accordingly.

- (2) The regulations may include such incidental or supplemental provision as appears to the Secretary of State to be necessary or desirable in consequence of any provision made by virtue of subsection (1)(a) or (b).
- (3) In this section “the enactments about adoption” means—
  - (a) the Adoption (Scotland) Act 1978 (c. 28),
  - (b) the Adoption and Children Act 2002 (c. 38),
  - (c) the Adoption and Children (Scotland) Act 2007 (asp 4), and
  - (d) the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).

#### *Amendments of enactments*

### **56 Amendments relating to parenthood in cases involving assisted reproduction**

Schedule 6 contains amendments related to the provisions of this Part.

#### **Commencement Information**

**110** S. 56 wholly in force at 6.4.2010; s. 56 not in force at Royal Assent see s. 68; s. 56 in force for certain purposes at 6.4.2009 and for further certain purposes at 1.9.2009 by S.I. 2009/479, art. 6(1)(f){(2)}; s. 56 in force at 6.4.2010 otherwise by S.I. 2010/987, art. 2(d)

#### *General*

### **57 Repeals and transitional provision relating to Part 2**

- (1) Sections 33 to 48 have effect only in relation to children carried by women as a result of the placing in them of embryos or of sperm and eggs, or their artificial insemination (as the case may be), after the commencement of those sections.
- (2) Sections 27 to 29 of the 1990 Act (which relate to status) do not have effect in relation to children carried by women as a result of the placing in them of embryos or of sperm and eggs, or their artificial insemination (as the case may be), after the commencement of sections 33 to 48.
- (3) Section 30 of the 1990 Act (parental orders in favour of gamete donors) ceases to have effect.
- (4) Subsection (3) does not affect the validity of any order made under section 30 of the 1990 Act before the coming into force of that subsection.

#### **Commencement Information**

**111** S. 57 wholly in force at 6.4.2010; s. 57 not in force at Royal Assent see s. 68; s. 57(1)(2) in force at 6.4.2009 by S.I. 2009/479, art. 6(b) (with Sch.); s. 57 in force at 6.4.2010 otherwise by S.I. 2010/987, art. 2(e)

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## 58 Interpretation of Part 2

- (1) In this Part “enactment” means an enactment contained in, or in an instrument made under—
- (a) an Act of Parliament,
  - (b) an Act of the Scottish Parliament,
  - (c) a Measure or Act of the National Assembly for Wales, or
  - (d) Northern Ireland legislation.
- (2) For the purposes of this Part, two persons are within prohibited degrees of relationship if one is the other's parent, grandparent, sister, brother, aunt or uncle; and in this subsection references to relationships—
- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would subsist but for adoption, and
  - (b) include the relationship of a child with his adoptive, or former adoptive, parents,
- but do not include any other adoptive relationships.
- (3) Other expressions used in this Part and in the 1990 Act have the same meaning in this Part as in that Act.

### Commencement Information

**I12** S. 58 partly in force; s. 58 not in force at Royal assent see s. 68; s. 58 in force for certain purposes at 6.4.2009 by S.I. 2009/479, art. 5(h) (with Sch.)

## PART 3

### MISCELLANEOUS AND GENERAL

VALID FROM 01/10/2009

#### *Miscellaneous*

## 59 Surrogacy arrangements

- (1) The Surrogacy Arrangements Act 1985 (c. 49) is amended as follows.
- (2) In section 1 (meaning of various terms), after subsection (7) insert—
- “(7A) “Non-profit making body” means a body of persons whose activities are not carried on for profit.”
- (3) In section 2 (negotiating surrogacy arrangements on a commercial basis), in subsection (1)—
- (a) in paragraph (a) omit “or take part in”, and
  - (b) after paragraph (a) insert—
    - “(aa) take part in any negotiations with a view to the making of a surrogacy arrangement,”.

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(4) After subsection (2) insert—

“(2A) A non-profit making body does not contravene subsection (1) merely because—

- (a) the body does an act falling within subsection (1)(a) or (c) in respect of which any reasonable payment is at any time received by it or another, or
- (b) it does an act falling within subsection (1)(a) or (c) with a view to any reasonable payment being received by it or another in respect of facilitating the making of any surrogacy arrangement.

(2B) A person who knowingly causes a non-profit making body to do an act falling within subsection (1)(a) or (c) does not contravene subsection (1) merely because—

- (a) any reasonable payment is at any time received by the body or another in respect of the body doing the act, or
- (b) the body does the act with a view to any reasonable payment being received by it or another person in respect of the body facilitating the making of any surrogacy arrangement.

(2C) Any reference in subsection (2A) or (2B) to a reasonable payment in respect of the doing of an act by a non-profit making body is a reference to a payment not exceeding the body's costs reasonably attributable to the doing of the act.”

(5) After subsection (5) of that section insert—

“(5A) A non-profit making body is not guilty of an offence under subsection (5), in respect of the receipt of any payment described in that subsection, merely because a person acting on behalf of the body takes part in facilitating the making of a surrogacy arrangement.”

(6) After subsection (8) of that section insert—

“(8A) A person is not guilty of an offence under subsection (7) if—

- (a) the body of persons referred to in that subsection is a non-profit making body, and
- (b) the only activity of that body which falls within subsection (8) is facilitating the making of surrogacy arrangements in the United Kingdom.

(8B) In subsection (8A)(b) “facilitating the making of surrogacy arrangements” is to be construed in accordance with subsection (8).”

(7) In section 3 (advertisements about surrogacy), after subsection (1) insert—

“(1A) This section does not apply to any advertisement placed by, or on behalf of, a non-profit making body if the advertisement relates only to the doing by the body of acts that would not contravene section 2(1) even if done on a commercial basis (within the meaning of section 2).”

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## **60 Exclusion of embryos from definition of “organism” in Part 6 of the EPA 1990**

- (1) Section 106 of the Environmental Protection Act 1990 (c. 43) (meaning of “genetically modified organisms” etc.) is amended as follows.
- (2) In subsection (2), for “or human embryos” substitute “, human embryos or human admixed embryos”.
- (3) After subsection (3) insert—
  - “(3A) For the purposes of subsection (2) above—
    - (a) “human embryo” means an embryo within the meaning given in the provisions of the Human Fertilisation and Embryology Act 1990 (apart from section 4A) by virtue of section 1(1) and (6) of that Act, and
    - (b) “human admixed embryo” has the same meaning as it has in that Act by virtue of section 4A(6) and (11) of that Act.”

### *General*

## **61 Orders and regulations: general provisions**

- (1) Any power of the Secretary of State to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) Any power of the Secretary of State to make an order or regulations under this Act may be exercised—
  - (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case, and
  - (b) so as to make, as respects the cases in relation to which it is exercised—
    - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
    - (ii) the same provision for all cases in relation to which the power is exercised, or different provision as respects the same case or class of case for different purposes;
    - (iii) any such provision either unconditionally, or subject to any specified condition.
- (3) Any power of the Secretary of State to make an order or regulations under this Act includes power to make such transitional, saving, incidental or supplemental provision as the Secretary of State considers appropriate.

## **62 Orders and regulations: parliamentary control**

- (1) Orders made by the Secretary of State under this Act are subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Subsection (1) does not apply to—
  - (a) an order to which subsection (3) applies, or
  - (b) an order under section 68 (commencement).



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- (3) No order under section 64 (power to make consequential and transitional provision etc.) which includes provision made by virtue of subsection (2) of that section may be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (4) No regulations under section 55 (parental orders: supplementary provision) may be made unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.

### **63 Meaning of “the 1990 Act”**

In this Act, “the 1990 Act” means the Human Fertilisation and Embryology Act 1990 (c. 37).

### **64 Power to make consequential and transitional provision etc.**

- (1) The Secretary of State may by order make—
  - (a) any supplementary, incidental or consequential provision, and
  - (b) any transitional or saving provision,that the Secretary of State considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under this section may modify—
  - (a) any enactment passed or made before the passing of this Act, and
  - (b) any enactment passed or made before the end of the Session in which this Act is passed.
- (3) An order under this section which modifies an enactment in consequence of any provision of Part 2 may modify subsection (5) of section 53 (interpretation of references to father etc.).
- (4) An order under this section may provide for any provision of this Act which comes into force before any other provision comes into force to have effect, until that other provision has come into force, with specified modifications.
- (5) Before making an order under this section containing provision which would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament, the Secretary of State must consult the Scottish Ministers.
- (6) Before making an order under this section containing provision which would be within the legislative competence of the National Assembly for Wales if it were included in a Measure of the Assembly (or, if the order is made after the Assembly Act provisions come into force, an Act of the Assembly), the Secretary of State must consult the Welsh Ministers.
- (7) Before making an order under this section containing provision which would, if included in an Act of the Northern Ireland Assembly, be within the legislative competence of that Assembly, the Secretary of State must consult the Department of Health, Social Services and Public Safety.
- (8) Nothing in this section limits the power under section 61 to include transitional or saving provision in a commencement order under section 68(2).

**Status:** Point in time view as at 13/11/2008. This version of this Act contains provisions that are not valid for this point in time.

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(9) The modifications that may be made by virtue of subsection (2) are in addition to those that are made by any other provision of this Act.

(10) In this section—

“enactment” means an enactment contained in, or in an instrument made under—

- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (c) a Measure of the National Assembly for Wales, or
- (d) Northern Ireland legislation;

“modify” includes amend, add to, revoke or repeal, and references to “modifications” are to be read accordingly;

“the Assembly Act provisions” has the meaning given by section 103(8) of the Government of Wales Act 2006 (c. 32).

VALID FROM 06/04/2009

## 65 Minor and consequential amendments

Schedule 7 contains minor and consequential amendments.

### Commencement Information

**I13** S. 65 wholly in force at 1.10.2009; s. 65 not in force at Royal Assent see s. 68; s. 65 in force at 6.4.2009 for certain purposes by S.I. 2009/479, art. 5(g); s. 65 in force at 1.10.009 otherwise by S.I. 2009/2232, art. 2(f)

VALID FROM 06/04/2009

## 66 Repeals and revocations

Schedule 8 contains repeals and revocations.

### Commencement Information

**I14** S. 66 wholly in force at 6.4.2010; s. 66 not in force at Royal Assent see s. 68; s. 66 in force for certain purposes at 6.4.2009 and for further certain purposes at 1.9.2009 by S.I. 2009/479, arts. 2, 6(1)(e)(2) (with Sch.); s. 66 in force for further certain purposes at 1.10.2009 by S.I. 2009/2232, art. 2(z); s. 66 in force at 6.4.2010 otherwise by S.I. 2010/987, art. 2(f)

## 67 Extent

(1) Subject to the following provisions, this Act extends to England and Wales, Scotland and Northern Ireland.

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- (2) Any amendment or repeal made by this Act has the same extent as the enactment to which it relates (ignoring extent by virtue of an Order in Council).
- (3) Subsection (2) is subject to paragraph 1(2) of Schedule 6.
- (4) Her Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to the Bailiwick of Guernsey.
- (5) Subsection (4) does not authorise the extension to the Bailiwick of Guernsey of a provision of this Act so far as the provision amends an enactment that does not itself extend there and is not itself capable of being extended there in exercise of a power conferred on Her Majesty in Council.
- (6) Subsection (4) does not apply in relation to the extension to the Bailiwick of Guernsey of a provision which extends there by virtue of subsection (2).
- (7) Subsection (3) of section 61 applies to the power to make an Order in Council under this section as it applies to any power of the Secretary of State to make an order under this Act, but as if the references in that subsection to the Secretary of State were references to Her Majesty in Council.

## 68 Commencement

- (1) The following provisions of this Act come into force on the day on which this Act is passed—
  - sections 61 to 64;
  - section 67, this section and section 69.
- (2) The remaining provisions of this Act come into force in accordance with provision made by the Secretary of State by order.

### Subordinate Legislation Made

- P1** [S. 68\(2\)](#) power partly exercised; different dates appointed for specified provisions and purposes by [S.I. 2009/479](#), [arts. 2-6](#) (with [Sch.](#)) (as amended by [S.I. 2009/2232](#), [art. 3](#)); 1.10.2009 appointed for specified provisions and purposes by [S.I. 2009/2232](#), [art. 2](#) (with [art. 4](#)); 6.4.2010 appointed for specified provisions and purposes by [S.I. 2010/987](#), [art. 2](#)

## 69 Short title

This Act may be cited as the Human Fertilisation and Embryology Act 2008.

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**Changes to legislation:** Human Fertilisation and Embryology Act 2008 is up to date with all changes known to be in force on or before 12 March 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)

VALID FROM 06/04/2009

## SCHEDULES

VALID FROM 01/10/2009

### SCHEDULE 1

Section 5

#### AMENDMENTS TO SCHEDULE 1 TO THE 1990 ACT RELATING TO MEMBERSHIP OF THE AUTHORITY

1 Schedule 1 to the 1990 Act (supplementary provision about Authority) is  
amended as follows.

2 After paragraph 4 (appointment of members) insert—

“4A (1) A person (“P”) is disqualified for being appointed as chairman, deputy chairman, or as any other member of the Authority if—

- (a) P is the subject of a bankruptcy restrictions order or interim order,
- (b) a bankruptcy order has been made against P by a court in Northern Ireland, P's estate has been sequestered by a court in Scotland, or under the law of Northern Ireland or Scotland, P has made a composition or arrangement with, or granted a trust deed for, P's creditors, or
- (c) in the last five years P has been convicted in the United Kingdom, the Channel Islands or the Isle of Man of an offence and has had a qualifying sentence passed on P.

(2) Where P is disqualified under sub-paragraph (1)(b) because a bankruptcy order has been made against P or P's estate has been sequestered, the disqualification ceases—

- (a) on P obtaining a discharge, or
- (b) if the bankruptcy order is annulled or the sequestration of P's estate is recalled or reduced, on the date of that event.

(3) Where P is disqualified under sub-paragraph (1)(b) because of P having made a composition or arrangement with, or granted a trust deed for, P's creditors, the disqualification ceases—

- (a) at the end of the period of five years beginning with the date on which the terms of the deed of composition or arrangement or trust deed are fulfilled, or
- (b) if, before then, P pays P's debts in full, on the date on which the payment is completed.

(4) For the purposes of sub-paragraph (1)(c), the date of conviction is to be taken to be the ordinary date on which the period allowed for making an appeal or application expires or, if an appeal or application is made,

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the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its non-prosecution.

(5) In sub-paragraph (1)(c), the reference to a qualifying sentence is to a sentence of imprisonment for a period of not less than three months (whether suspended or not) without the option of a fine.”

3

In paragraph 5—

(a) after sub-paragraph (4), insert—

“(4A) A person holding office as chairman, deputy chairman or other member of the Authority is to cease to hold that office if the person becomes disqualified for appointment to it.”, and

(b) in sub-paragraph (5)—

- (i) omit paragraph (b) and the word “or” immediately after it,
- (ii) in paragraph (c) for “functions of a member” substitute “person's functions as chairman, deputy chairman or other member”, and
- (iii) in the full-out words, for the words from “declare” to the end substitute “remove the member from office as chairman, deputy chairman or other member”.

VALID FROM 01/10/2009

## SCHEDULE 2

Section 11

### ACTIVITIES THAT MAY BE LICENSED UNDER THE 1990 ACT

#### *Introductory*

1

Schedule 2 to the 1990 Act (activities for which licences may be granted) is amended as follows.

#### *Licences for treatment*

2

(1) Paragraph 1 (licences for treatment) is amended as follows.

(2) In sub-paragraph (1)—

(a) after paragraph (c) insert—

“(ca) using embryos for the purpose of training persons in embryo biopsy, embryo storage or other embryological techniques,”,

(b) in paragraph (d), omit the words from “or” onwards,

(c) in paragraph (e), for “embryo” substitute “permitted embryo”, and

(d) in paragraph (g), after “practices” insert “, apart from practices falling within section 4A(2),”.

(3) For sub-paragraph (4) substitute—

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“(4) A licence under this paragraph cannot authorise altering the nuclear or mitochondrial DNA of a cell while it forms part of an embryo, except for the purpose of creating something that will by virtue of regulations under section 3ZA(5) be a permitted embryo.”

(4) After sub-paragraph (4) insert—

“(4A) A licence under this paragraph cannot authorise the use of embryos for the purpose mentioned in sub-paragraph (1)(ca) unless the Authority is satisfied that the proposed use of embryos is necessary for that purpose.”

(5) At the end insert—

“(6) In this paragraph, references to a permitted embryo are to be read in accordance with section 3ZA.”

*Embryo testing and sex selection*

After paragraph 1 insert—

*“Embryo testing*

1ZA(1) A licence under paragraph 1 cannot authorise the testing of an embryo, except for one or more of the following purposes—

- (a) establishing whether the embryo has a gene, chromosome or mitochondrion abnormality that may affect its capacity to result in a live birth,
- (b) in a case where there is a particular risk that the embryo may have any gene, chromosome or mitochondrion abnormality, establishing whether it has that abnormality or any other gene, chromosome or mitochondrion abnormality,
- (c) in a case where there is a particular risk that any resulting child will have or develop—
  - (i) a gender-related serious physical or mental disability,
  - (ii) a gender-related serious illness, or
  - (iii) any other gender-related serious medical condition,
 establishing the sex of the embryo,
- (d) in a case where a person (“the sibling”) who is the child of the persons whose gametes are used to bring about the creation of the embryo (or of either of those persons) suffers from a serious medical condition which could be treated by umbilical cord blood stem cells, bone marrow or other tissue of any resulting child, establishing whether the tissue of any resulting child would be compatible with that of the sibling, and
- (e) in a case where uncertainty has arisen as to whether the embryo is one of those whose creation was brought about by using the gametes of particular persons, establishing whether it is.

(2) A licence under paragraph 1 cannot authorise the testing of embryos for the purpose mentioned in sub-paragraph (1)(b) unless the Authority is satisfied—

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- (a) in relation to the abnormality of which there is a particular risk, and
  - (b) in relation to any other abnormality for which testing is to be authorised under sub-paragraph (1)(b),
- that there is a significant risk that a person with the abnormality will have or develop a serious physical or mental disability, a serious illness or any other serious medical condition.
- (3) For the purposes of sub-paragraph (1)(c), a physical or mental disability, illness or other medical condition is gender-related if the Authority is satisfied that—
- (a) it affects only one sex, or
  - (b) it affects one sex significantly more than the other.
- (4) In sub-paragraph (1)(d) the reference to “other tissue” of the resulting child does not include a reference to any whole organ of the child.

#### *Sex selection*

- 1ZB(1) A licence under paragraph 1 cannot authorise any practice designed to secure that any resulting child will be of one sex rather than the other.
- (2) Sub-paragraph (1) does not prevent the authorisation of any testing of embryos that is capable of being authorised under paragraph 1ZA.
- (3) Sub-paragraph (1) does not prevent the authorisation of any other practices designed to secure that any resulting child will be of one sex rather than the other in a case where there is a particular risk that a woman will give birth to a child who will have or develop—
- (a) a gender-related serious physical or mental disability,
  - (b) a gender-related serious illness, or
  - (c) any other gender-related serious medical condition.
- (4) For the purposes of sub-paragraph (3), a physical or mental disability, illness or other medical condition is gender-related if the Authority is satisfied that—
- (a) it affects only one sex, or
  - (b) it affects one sex significantly more than the other.

#### *Power to amend paragraphs 1ZA and 1ZB*

- 1ZC(1) Regulations may make any amendment of paragraph 1ZA (embryo testing).
- (2) Regulations under this paragraph which amend paragraph 1ZA may make any amendment of sub-paragraphs (2) to (4) of paragraph 1ZB (sex selection) which appears to the Secretary of State to be necessary or expedient in consequence of the amendment of paragraph 1ZA.
- (3) Regulations under this paragraph may not enable the authorisation of—
- (a) the testing of embryos for the purpose of establishing their sex, or

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(b) other practices falling within paragraph 1ZB(1),  
except on grounds relating to the health of any resulting child.

(4) For the purposes of this paragraph, “amend” includes add to and repeal, and references to “amendment” are to be read accordingly.”

*Licences for non-medical fertility services*

In paragraph 1A (licences for non-medical fertility services) after sub-paragraph (1) insert—

“(1A) A licence under this paragraph cannot authorise the procurement or distribution of sperm to which there has been applied any process designed to secure that any resulting child will be of one sex rather than the other.”

*Licences for storage*

In paragraph 2 (licences for storage)—

(a) after sub-paragraph (1) insert—

“(1A) A licence under this paragraph or paragraph 3 may authorise the storage of human admixed embryos (whether or not the licence also authorises the storage of gametes or embryos or both).”, and

(b) in sub-paragraph (2), after “such storage” insert “ as is mentioned in sub-paragraph (1) or (1A) ”.

*Licences for research*

For paragraph 3 substitute—

*“Licences for research*

3 (1) A licence under this paragraph may authorise any of the following—

- (a) bringing about the creation of embryos *in vitro*, and
- (b) keeping or using embryos,

for the purposes of a project of research specified in the licence.

(2) A licence under this paragraph may authorise mixing sperm with the egg of a hamster, or other animal specified in directions, for the purpose of developing more effective techniques for determining the fertility or normality of sperm, but only where anything which forms is destroyed when the research is complete and, in any event, no later than the two cell stage.

(3) A licence under this paragraph may authorise any of the following—

- (a) bringing about the creation of human admixed embryos *in vitro*, and
- (b) keeping or using human admixed embryos,

for the purposes of a project of research specified in the licence.



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- (4) A licence under sub-paragraph (3) may not authorise the activity which may be authorised by a licence under sub-paragraph (2).
- (5) No licence under this paragraph is to be granted unless the Authority is satisfied that any proposed use of embryos or human admixed embryos is necessary for the purposes of the research.
- (6) Subject to the provisions of this Act, a licence under this paragraph may be granted subject to such conditions as may be specified in the licence.
- (7) A licence under this paragraph may authorise the performance of any of the activities referred to in sub-paragraph (1), (2) or (3) in such manner as may be so specified.
- (8) A licence under this paragraph may be granted for such period not exceeding three years as may be specified in the licence.
- (9) This paragraph has effect subject to paragraph 3A.

*Purposes for which activities may be licensed under paragraph 3*

- 3A (1) A licence under paragraph 3 cannot authorise any activity unless the activity appears to the Authority—
- (a) to be necessary or desirable for any of the purposes specified in sub-paragraph (2) (“the principal purposes”),
  - (b) to be necessary or desirable for the purpose of providing knowledge that, in the view of the Authority, may be capable of being applied for the purposes specified in sub-paragraph (2)(a) or (b), or
  - (c) to be necessary or desirable for such other purposes as may be specified in regulations.
- (2) The principal purposes are—
- (a) increasing knowledge about serious disease or other serious medical conditions,
  - (b) developing treatments for serious disease or other serious medical conditions,
  - (c) increasing knowledge about the causes of any congenital disease or congenital medical condition that does not fall within paragraph (a),
  - (d) promoting advances in the treatment of infertility,
  - (e) increasing knowledge about the causes of miscarriage,
  - (f) developing more effective techniques of contraception,
  - (g) developing methods for detecting the presence of gene, chromosome or mitochondrion abnormalities in embryos before implantation, or
  - (h) increasing knowledge about the development of embryos.”

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## SCHEDULE 3

Section 13

CONSENT TO USE OR STORAGE OF GAMETES,  
EMBRYOS OR HUMAN ADMIXED EMBRYOS ETC.

*Introductory*

1 Schedule 3 to the 1990 Act (giving of consent to use or storage of gametes  
or embryos) is amended as follows.

2 In the title to that Schedule, for “OF GAMETES OR EMBRYOS”, substitute  
“ OR STORAGE OF GAMETES, EMBRYOS OR HUMAN ADMIXED  
EMBRYOS ETC ”.

*General requirements as to consent*

3 For paragraph 1 substitute—

“1 (1) A consent under this Schedule, and any notice under paragraph 4  
varying or withdrawing a consent under this Schedule, must be in  
writing and, subject to sub-paragraph (2), must be signed by the person  
giving it.

(2) A consent under this Schedule by a person who is unable to sign  
because of illness, injury or physical disability (a “person unable to  
sign”), and any notice under paragraph 4 by a person unable to sign  
varying or withdrawing a consent under this Schedule, is to be taken  
to comply with the requirement of sub-paragraph (1) as to signature if  
it is signed at the direction of the person unable to sign, in the presence  
of the person unable to sign and in the presence of at least one witness  
who attests the signature.

(3) In this Schedule “effective consent” means a consent under this  
Schedule which has not been withdrawn.”

*Terms of consent*

4 (1) Paragraph 2 (terms etc. of consent) is amended as follows.

(2) In sub-paragraph (1), for the “or” at the end of paragraph (b) substitute—

“(ba) use for the purpose of training persons in embryo biopsy, embryo  
storage or other embryological techniques, or”.

(3) After sub-paragraph (1) insert—

“(1A) A consent to the use of any human admixed embryo must specify use  
for the purposes of any project of research and may specify conditions  
subject to which the human admixed embryo may be so used.”

(4) For sub-paragraph (2) substitute—

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“(2) A consent to the storage of any gametes, any embryo or any human admixed embryo must—

- (a) specify the maximum period of storage (if less than the statutory storage period),
- (b) except in a case falling within paragraph (c), state what is to be done with the gametes, embryo or human admixed embryo if the person who gave the consent dies or is unable, because the person lacks capacity to do so, to vary the terms of the consent or to withdraw it, and
- (c) where the consent is given by virtue of paragraph 8(2A) or 13(2), state what is to be done with the embryo or human admixed embryo if the person to whom the consent relates dies,

and may (in any case) specify conditions subject to which the gametes, embryo or human admixed embryo may remain in storage.

(2A) A consent to the use of a person's human cells to bring about the creation *in vitro* of an embryo or human admixed embryo is to be taken unless otherwise stated to include consent to the use of the cells after the person's death.

(2B) In relation to Scotland, the reference in sub-paragraph (2)(b) to the person lacking capacity is to be read as a reference to the person—

- (a) lacking capacity within the meaning of the Age of Legal Capacity (Scotland) Act 1991, or
- (b) being incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000.”

(5) For sub-paragraph (4) substitute—

“(4) A consent under this Schedule may apply—

- (a) to the use or storage of a particular embryo or human admixed embryo, or
- (b) in the case of a person providing gametes or human cells, to the use or storage of—
  - (i) any embryo or human admixed embryo whose creation may be brought about using those gametes or those cells, and
  - (ii) any embryo or human admixed embryo whose creation may be brought about using such an embryo or human admixed embryo.

(5) In the case of a consent falling within sub-paragraph (4)(b), the terms of the consent may be varied, or the consent may be withdrawn, in accordance with this Schedule either generally or in relation to—

- (a) a particular embryo or particular embryos, or
- (b) a particular human admixed embryo or particular human admixed embryos.”

*Information to be given to a person giving consent*

In paragraph 3 (procedure for giving consent), in sub-paragraph (2), after “paragraph 4” insert “ and, if relevant, paragraph 4A ”.

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*Variation and withdrawal of consent*

- 6 (1) Paragraph 4 (variation and withdrawal of consent) is amended as follows.
- (2) In sub-paragraph (1), for “or embryo” substitute “, human cells, embryo or human admixed embryo”.
- (3) In sub-paragraph (2)—
- (a) for “The” substitute “ Subject to sub-paragraph (3), the ”, and
- (b) for the “or” at the end of paragraph (a) substitute—
- “(aa) in training persons in embryo biopsy, embryo storage or other embryological techniques, or”.
- (4) After sub-paragraph (2) insert—
- “(3) Where the terms of any consent to the use of an embryo (“embryo A”) include consent to the use of an embryo or human admixed embryo whose creation may be brought about *in vitro* using embryo A, that consent to the use of that subsequent embryo or human admixed embryo cannot be varied or withdrawn once embryo A has been used for one or more of the purposes mentioned in sub-paragraph (2)(a) or (b).
- (4) Subject to sub-paragraph (5), the terms of any consent to the use of any human admixed embryo cannot be varied, and such consent cannot be withdrawn, once the human admixed embryo has been used for the purposes of any project of research.
- (5) Where the terms of any consent to the use of a human admixed embryo (“human admixed embryo A”) include consent to the use of a human admixed embryo or embryo whose creation may be brought about *in vitro* using human admixed embryo A, that consent to the use of that subsequent human admixed embryo or embryo cannot be varied or withdrawn once human admixed embryo A has been used for the purposes of any project of research.”

*Withdrawal of consent to storage: notification of interested persons*

- 7 After paragraph 4 insert—
- “4A (1) This paragraph applies where—
- (a) a permitted embryo, the creation of which was brought about *in vitro*, is in storage,
- (b) it was created for use in providing treatment services,
- (c) before it is used in providing treatment services, one of the persons whose gametes were used to bring about its creation (“P”) gives the person keeping the embryo notice withdrawing P’s consent to the storage of the embryo, and
- (d) the embryo was not to be used in providing treatment services to P alone.
- (2) The person keeping the embryo must as soon as possible take all reasonable steps to notify each interested person in relation to the embryo of P’s withdrawal of consent.

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(3) For the purposes of sub-paragraph (2), a person is an interested person in relation to an embryo if the embryo was to be used in providing treatment services to that person.

(4) Storage of the embryo remains lawful until—

- (a) the end of the period of 12 months beginning with the day on which the notice mentioned in sub-paragraph (1) was received from P, or
- (b) if, before the end of that period, the person keeping the embryo receives a notice from each person notified of P's withdrawal under sub-paragraph (2) stating that the person consents to the destruction of the embryo, the time at which the last of those notices is received.

(5) The reference in sub-paragraph (1)(a) to a permitted embryo is to be read in accordance with section 3ZA.”

*Application of consent provisions to non-medical fertility services*

8 In paragraph 5 (use of gametes for treatment of others), in sub-paragraph (1), after “treatment services” insert “ or non-medical fertility services ”.

*In vitro fertilisation and subsequent use of embryo*

9 (1) Paragraph 6 (*in vitro* fertilisation and subsequent use of embryo) is amended as follows.

(2) In sub-paragraph (1)—

- (a) after “person's gametes” insert “ or human cells ”,
- (b) after “to any embryo” insert a comma,
- (c) after “those gametes” insert “ or human cells, ”, and
- (d) for “paragraph 2(1)” substitute “ paragraph 2(1)(a), (b) and (c) ”.

(3) In sub-paragraph (2)—

- (a) for the words from “each person” to “creation of” substitute “ each relevant person in relation to ”, and
- (b) for “paragraph 2(1)” substitute “ paragraph 2(1)(a), (b), (ba) and (c) ”.

(4) In sub-paragraph (3), for the words from “person” to “creation of” substitute “ relevant person in relation to ”.

(5) After sub-paragraph (3) insert—

“(3A) If the Authority is satisfied that the parental consent conditions in paragraph 15 are met in relation to the proposed use under a licence of the human cells of a person who has not attained the age of 18 years (“C”), the Authority may in the licence authorise the application of sub-paragraph (3B) in relation to C.

(3B) Where the licence authorises the application of this sub-paragraph, the effective consent of a person having parental responsibility for C—

- (a) to the use of C's human cells to bring about the creation of an embryo *in vitro* for use for the purposes of a project of research, or

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(b) to the use for those purposes of an embryo in relation to which C is a relevant person by reason only of the use of C's human cells, is to be treated for the purposes of sub-paragraphs (1) to (3) as the effective consent of C.

(3C) If C attains the age of 18 years or the condition in paragraph 15(3) ceases to be met in relation to C, paragraph 4 has effect in relation to C as if any effective consent previously given under sub-paragraphs (1) to (3) by a person having parental responsibility for C had been given by C but, subject to that, sub-paragraph (3B) ceases to apply in relation to C.

(3D) Sub-paragraphs (1) to (3) have effect subject to paragraphs 16 and 20.

(3E) For the purposes of sub-paragraphs (2), (3) and (3B), each of the following is a relevant person in relation to an embryo the creation of which was brought about *in vitro* (“embryo A”)—

- (a) each person whose gametes or human cells were used to bring about the creation of embryo A,
- (b) each person whose gametes or human cells were used to bring about the creation of any other embryo, the creation of which was brought about *in vitro*, which was used to bring about the creation of embryo A, and
- (c) each person whose gametes or human cells were used to bring about the creation of any human admixed embryo, the creation of which was brought about *in vitro*, which was used to bring about the creation of embryo A.”

*Use of embryos obtained by lavage etc.*

10 (1) Paragraph 7 (embryos obtained by lavage etc.) is amended as follows.

(2) In sub-paragraph (3), for “This paragraph does” substitute “ Sub-paragraphs (1) and (2) do ”.

(3) After sub-paragraph (3) insert—

“(4) An embryo taken from a woman must not be used to bring about the creation of any embryo *in vitro* or any human admixed embryo *in vitro*.”

*Consents in relation to storage*

11 (1) Paragraph 8 (storage of gametes and embryos) is amended as follows.

(2) In sub-paragraph (2), for the words from “person” to “creation of” substitute “ relevant person in relation to ”.

(3) After sub-paragraph (2) insert—

“(2A) Where a licence authorises the application of paragraph 6(3B) in relation to a person who has not attained the age of 18 years (“C”), the effective consent of a person having parental responsibility for C to the storage of an embryo in relation to which C is a relevant person by reason only of the use of C's human cells is to be treated for the purposes of sub-paragraph (2) as the effective consent of C.

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(2B) If C attains the age of 18 years or the condition in paragraph 15(3) ceases to be met in relation to C, paragraph 4 has effect in relation to C as if any effective consent previously given under sub-paragraph (2) by a person having parental responsibility for C had been given by C but, subject to that, sub-paragraph (2A) ceases to apply in relation to C.

(2C) For the purposes of sub-paragraphs (2) and (2A), each of the following is a relevant person in relation to an embryo the creation of which was brought about *in vitro* (“embryo A”)—

- (a) each person whose gametes or human cells were used to bring about the creation of embryo A,
- (b) each person whose gametes or human cells were used to bring about the creation of any other embryo, the creation of which was brought about *in vitro*, which was used to bring about the creation of embryo A, and
- (c) each person whose gametes or human cells were used to bring about the creation of any human admixed embryo, the creation of which was brought about *in vitro*, which was used to bring about the creation of embryo A.”

(4) After sub-paragraph (3) insert—

“(4) Sub-paragraph (1) has effect subject to paragraphs 9 and 10; and sub-paragraph (2) has effect subject to paragraphs 4A(4), 16 and 20.”

12

After paragraph 8 insert—

*“Cases where consent not required for storage*

- 9 (1) The gametes of a person (“C”) may be kept in storage without C's consent if the following conditions are met.
- (2) Condition A is that the gametes are lawfully taken from or provided by C before C attains the age of 18 years.
  - (3) Condition B is that, before the gametes are first stored, a registered medical practitioner certifies in writing that C is expected to undergo medical treatment and that in the opinion of the registered medical practitioner—
    - (a) the treatment is likely to cause a significant impairment of C's fertility, and
    - (b) the storage of the gametes is in C's best interests.
  - (4) Condition C is that, at the time when the gametes are first stored, either—
    - (a) C has not attained the age of 16 years and is not competent to deal with the issue of consent to the storage of the gametes, or
    - (b) C has attained that age but, although not lacking capacity to consent to the storage of the gametes, is not competent to deal with the issue of consent to their storage.
  - (5) Condition D is that C has not, since becoming competent to deal with the issue of consent to the storage of the gametes—

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- (a) given consent under this Schedule to the storage of the gametes, or
  - (b) given written notice to the person keeping the gametes that C does not wish them to continue to be stored.
- (6) In relation to Scotland, sub-paragraphs (1) to (5) are to be read with the following modifications—
- (a) for sub-paragraph (4), substitute—
    - “(4) Condition C is that, at the time when the gametes are first stored, C does not have capacity (within the meaning of section 2(4) of the Age of Legal Capacity (Scotland) Act 1991) to consent to the storage of the gametes.”, and
    - (b) in sub-paragraph (5), for “becoming competent to deal with the issue of consent to the storage of the gametes” substitute “acquiring such capacity”.
- 10 (1) The gametes of a person (“P”) may be kept in storage without P’s consent if the following conditions are met.
- (2) Condition A is that the gametes are lawfully taken from or provided by P after P has attained the age of 16 years.
  - (3) Condition B is that, before the gametes are first stored, a registered medical practitioner certifies in writing that P is expected to undergo medical treatment and that in the opinion of the registered medical practitioner—
    - (a) the treatment is likely to cause a significant impairment of P’s fertility,
    - (b) P lacks capacity to consent to the storage of the gametes,
    - (c) P is likely at some time to have that capacity, and
    - (d) the storage of the gametes is in P’s best interests.
  - (4) Condition C is that, at the time when the gametes are first stored, P lacks capacity to consent to their storage.
  - (5) Condition D is that P has not subsequently, at a time when P has capacity to give a consent under this Schedule—
    - (a) given consent to the storage of the gametes, or
    - (b) given written notice to the person keeping the gametes that P does not wish them to continue to be stored.
  - (6) In relation to Scotland—
    - (a) references in sub-paragraphs (3) and (4) to P lacking capacity to consent are to be read as references to P being incapable, within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000, of giving such consent,
    - (b) the references in sub-paragraphs (3) and (5) to P having capacity are to be read as references to P not being so incapable, and
    - (c) that Act applies to the storage of gametes under this paragraph to the extent specified in section 84A of that Act.



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11 A person's gametes must not be kept in storage by virtue of paragraph 9 or 10 after the person's death.”

*Creation, use and storage of human admixed embryos*

13 After paragraph 11 (as inserted by paragraph 12 above) insert—

*“Creation, use and storage of human admixed embryos*

- 12 (1) A person's gametes or human cells must not be used to bring about the creation of any human admixed embryo *in vitro* unless there is an effective consent by that person to any human admixed embryo, the creation of which may be brought about with the use of those gametes or human cells, being used for the purposes of any project of research.
- (2) A human admixed embryo the creation of which was brought about *in vitro* must not be received by any person unless there is an effective consent by each relevant person in relation to the human admixed embryo to the use of the human admixed embryo for the purposes of any project of research.
- (3) A human admixed embryo the creation of which was brought about *in vitro* must not be used for the purposes of a project of research unless—
- (a) there is an effective consent by each relevant person in relation to the human admixed embryo to the use of the human admixed embryo for that purpose, and
  - (b) the human admixed embryo is used in accordance with those consents.
- (4) If the Authority is satisfied that the parental consent conditions in paragraph 15 are met in relation to the proposed use under a licence of the human cells of a person who has not attained the age of 18 years (“C”), the Authority may in the licence authorise the application of sub-paragraph (5) in relation to C.
- (5) Where the licence authorises the application of this sub-paragraph, the effective consent of a person having parental responsibility for C—
- (a) to the use of C's human cells to bring about the creation of a human admixed embryo *in vitro* for use for the purposes of a project of research, or
  - (b) to the use for those purposes of a human admixed embryo in relation to which C is a relevant person by reason only of the use of C's human cells,
- is to be treated for the purposes of sub-paragraphs (1) to (3) as the effective consent of C.
- (6) If C attains the age of 18 years or the condition in paragraph 15(3) ceases to be met in relation to C, paragraph 4 has effect in relation to C as if any effective consent previously given under sub-paragraphs (1) to (3) by a person having parental responsibility for C had been given by C but, subject to that, sub-paragraph (5) ceases to apply in relation to C.

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(7) Sub-paragraphs (1) to (3) have effect subject to paragraphs 16 and 20.

- 13 (1) A human admixed embryo the creation of which was brought about *in vitro* must not be kept in storage unless—
- (a) there is an effective consent by each relevant person in relation to the human admixed embryo to the storage of the human admixed embryo, and
  - (b) the human admixed embryo is stored in accordance with those consents.
- (2) Where a licence authorises the application of paragraph 12(5) in relation to a person who has not attained the age of 18 years (“C”), the effective consent of a person having parental responsibility for C to the storage of a human admixed embryo in relation to which C is a relevant person by reason only of the use of C's human cells is to be treated for the purposes of sub-paragraph (1) as the effective consent of C.
- (3) If C attains the age of 18 years or the condition in paragraph 15(3) ceases to be met in relation to C, paragraph 4 has effect in relation to C as if any effective consent previously given under sub-paragraph (1) by a person having parental responsibility for C had been given by C but, subject to that, sub-paragraph (2) ceases to apply in relation to C.
- (4) Sub-paragraph (1) has effect subject to paragraphs 16 and 20.
- 14 For the purposes of paragraphs 12 and 13, each of the following is a relevant person in relation to a human admixed embryo the creation of which was brought about *in vitro* (“human admixed embryo A”)—
- (a) each person whose gametes or human cells were used to bring about the creation of human admixed embryo A,
  - (b) each person whose gametes or human cells were used to bring about the creation of any embryo, the creation of which was brought about *in vitro*, which was used to bring about the creation of human admixed embryo A, and
  - (c) each person whose gametes or human cells were used to bring about the creation of any other human admixed embryo, the creation of which was brought about *in vitro*, which was used to bring about the creation of human admixed embryo A.”

*Cases where human cells etc. can be used without consent of person providing them*

14 After paragraph 14 (as inserted by paragraph 13 above) insert—

*“Parental consent conditions*

- 15 (1) In relation to a person who has not attained the age of 18 years (“C”), the parental consent conditions referred to in paragraphs 6(3A) and 12(4) are as follows.
- (2) Condition A is that C suffers from, or is likely to develop, a serious disease, a serious physical or mental disability or any other serious medical condition.

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- (3) Condition B is that either—
- (a) C is not competent to deal with the issue of consent to the use of C's human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of a project of research, or
  - (b) C has attained the age of 16 years but lacks capacity to consent to such use of C's human cells.
- (4) Condition C is that any embryo or human admixed embryo to be created *in vitro* is to be used for the purposes of a project of research which is intended to increase knowledge about—
- (a) the disease, disability or medical condition mentioned in sub-paragraph (2) or any similar disease, disability or medical condition, or
  - (b) the treatment of, or care of persons affected by, that disease, disability or medical condition or any similar disease, disability or medical condition.
- (5) Condition D is that there are reasonable grounds for believing that research of comparable effectiveness cannot be carried out if the only human cells that can be used to bring about the creation *in vitro* of embryos or human admixed embryos for use for the purposes of the project are the human cells of persons who—
- (a) have attained the age of 18 years and have capacity to consent to the use of their human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of the project, or
  - (b) have not attained that age but are competent to deal with the issue of consent to such use of their human cells.
- (6) In relation to Scotland, sub-paragraphs (1) to (5) are to be read with the following modifications—
- (a) for sub-paragraph (3) substitute—
    - “(3) Condition B is that C does not have capacity (within the meaning of section 2(4ZB) of the Age of Legal Capacity (Scotland) Act 1991) to consent to the use of C's human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of a project of research.”,
    - (b) in sub-paragraph (5)(a), for “have capacity to consent” substitute “ are not incapable (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000) of giving consent ”, and
    - (c) in sub-paragraph (5)(b), for “are competent to deal with the issue of” substitute “ have capacity (within the meaning of section 2(4ZB) of the Age of Legal Capacity (Scotland) Act 1991) to ”.

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*Adults lacking capacity: exemption relating to use of human cells etc.*

- 16 (1) If, in relation to the proposed use under a licence of the human cells of a person who has attained the age of 18 years (“P”), the Authority is satisfied—
- (a) that the conditions in paragraph 17 are met,
  - (b) that paragraphs (1) to (4) of paragraph 18 have been complied with, and
  - (c) that the condition in paragraph 18(5) is met,
- the Authority may in the licence authorise the application of this paragraph in relation to P.
- (2) Where a licence authorises the application of this paragraph, this Schedule does not require the consent of P—
- (a) to the use (whether during P's life or after P's death) of P's human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of a project of research,
  - (b) to the storage or the use for those purposes (whether during P's life or after P's death) of an embryo or human admixed embryo in relation to which P is a relevant person by reason only of the use of P's human cells.
- (3) This paragraph has effect subject to paragraph 19.

*Consent to use of human cells etc. not required: adult lacking capacity*

- 17 (1) The conditions referred to in paragraph 16(1)(a) are as follows.
- (2) Condition A is that P suffers from, or is likely to develop, a serious disease, a serious physical or mental disability or any other serious medical condition.
  - (3) Condition B is that P lacks capacity to consent to the use of P's human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of a project of research.
  - (4) Condition C is that the person responsible under the licence has no reason to believe that P had refused such consent at a time when P had that capacity.
  - (5) Condition D is that it appears unlikely that P will at some time have that capacity.
  - (6) Condition E is that any embryo or human admixed embryo to be created *in vitro* is to be used for the purposes of a project of research which is intended to increase knowledge about—
    - (a) the disease, disability or medical condition mentioned in subparagraph (2) or any similar disease, disability or medical condition, or
    - (b) the treatment of, or care of persons affected by, that disease, disability or medical condition or any similar disease, disability or medical condition.

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- (7) Condition F is that there are reasonable grounds for believing that research of comparable effectiveness cannot be carried out if the only human cells that can be used to bring about the creation *in vitro* of embryos or human admixed embryos for use for the purposes of the project are the human cells of persons who—
- (a) have attained the age of 18 years and have capacity to consent to the use of their human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of the project, or
  - (b) have not attained that age but are competent to deal with the issue of consent to such use of their human cells.
- (8) In this paragraph and paragraph 18 references to the person responsible under the licence are to be read, in a case where an application for a licence is being made, as references to the person who is to be the person responsible.
- (9) In relation to Scotland—
- (a) references in sub-paragraphs (3) to (5) to P lacking, or having, capacity to consent are to be read respectively as references to P being, or not being, incapable (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000) of giving such consent, and
  - (b) sub-paragraph (7) is to be read with the following modifications—
    - (i) in paragraph (a), for “have capacity to consent” substitute “are not incapable (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000) of giving consent”, and
    - (ii) in paragraph (b), for “are competent to deal with the issue of” substitute “have capacity (within the meaning of section 2(4ZB) of the Age of Legal Capacity (Scotland) Act 1991) to”.

*Consulting carers etc. in case of adult lacking capacity*

- 18 (1) This paragraph applies in relation to a person who has attained the age of 18 years (“P”) where the person responsible under the licence (“R”) wishes to use P’s human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of a project of research, in a case where P lacks capacity to consent to their use.
- (2) R must take reasonable steps to identify a person who—
- (a) otherwise than in a professional capacity or for remuneration, is engaged in caring for P or is interested in P’s welfare, and
  - (b) is prepared to be consulted by R under this paragraph of this Schedule.
- (3) If R is unable to identify such a person R must nominate a person who—
- (a) is prepared to be consulted by R under this paragraph of this Schedule, but

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(b) has no connection with the project.

- (4) R must provide the person identified under sub-paragraph (2) or nominated under sub-paragraph (3) (“F”) with information about the proposed use of human cells to bring about the creation *in vitro* of embryos or human admixed embryos for use for the purposes of the project and ask F what, in F's opinion, P's wishes and feelings about the use of P's human cells for that purpose would be likely to be if P had capacity in relation to the matter.
- (5) The condition referred to in paragraph 16(1)(c) is that, on being consulted, F has not advised R that in F's opinion P's wishes and feelings would be likely to lead P to decline to consent to the use of P's human cells for that purpose.
- (6) In relation to Scotland, the references in sub-paragraphs (1) and (4) to P lacking, or having, capacity to consent are to be read respectively as references to P being, or not being, incapable (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000) of giving such consent.

*Effect of acquiring capacity*

- 19 (1) Paragraph 16 does not apply to the use of P's human cells to bring about the creation *in vitro* of an embryo or human admixed embryo if, at a time before the human cells are used for that purpose, P—
- (a) has capacity to consent to their use, and
  - (b) gives written notice to the person keeping the human cells that P does not wish them to be used for that purpose.
- (2) Paragraph 16 does not apply to the storage or use of an embryo or human admixed embryo whose creation *in vitro* was brought about with the use of P's human cells if, at a time before the embryo or human admixed embryo is used for the purposes of the project of research, P—
- (a) has capacity to consent to the storage or use, and
  - (b) gives written notice to the person keeping the human cells that P does not wish them to be used for that purpose.
- (3) In relation to Scotland, the references in sub-paragraphs (1)(a) and (2) (a) to P having capacity to consent are to be read as references to P not being incapable (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000) of giving such consent.

*Use of cells or cell lines in existence before relevant commencement date*

- 20 (1) Where a licence authorises the application of this paragraph in relation to qualifying cells, this Schedule does not require the consent of a person (“P”)—
- (a) to the use of qualifying cells of P to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of a project of research, or

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- (b) to the storage or the use for those purposes of an embryo or human admixed embryo in relation to which P is a relevant person by reason only of the use of qualifying cells of P.
- (2) “Qualifying cells” are human cells which—
  - (a) were lawfully stored for research purposes immediately before the commencement date, or
  - (b) are derived from human cells which were lawfully stored for those purposes at that time.
- (3) The “commencement date” is the date on which paragraph 9(2)(a) of Schedule 3 to the Human Fertilisation and Embryology Act 2008 (requirement for consent to use of human cells to create an embryo) comes into force.

*Conditions for grant of exemption in paragraph 20*

- 21 (1) A licence may not authorise the application of paragraph 20 unless the Authority is satisfied—
- (a) that there are reasonable grounds for believing that scientific research will be adversely affected to a significant extent if the only human cells that can be used to bring about the creation *in vitro* of embryos or human admixed embryos for use for the purposes of the project of research are—
    - (i) human cells in respect of which there is an effective consent to their use to bring about the creation *in vitro* of embryos or human admixed embryos for use for those purposes, or
    - (ii) human cells which by virtue of paragraph 16 can be used without such consent, and
  - (b) that any of the following conditions is met in relation to each of the persons whose human cells are qualifying cells which are to be used for the purposes of the project of research.
- (2) Condition A is that—
- (a) it is not reasonably possible for the person responsible under the licence (“R”) to identify the person falling within subparagraph (1)(b) (“P”), and
  - (b) where any information that relates to P (without identifying P or enabling P to be identified) is available to R, that information does not suggest that P would have objected to the use of P’s human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of the project.
- (3) Condition B is that—
- (a) the person falling within subparagraph (1)(b) (“P”) is dead or the person responsible under the licence (“R”) believes on reasonable grounds that P is dead,
  - (b) the information relating to P that is available to R does not suggest that P would have objected to the use of P’s human

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- cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of the project, and
- (c) a person who stood in a qualifying relationship to P immediately before P died (or is believed to have died) has given consent in writing to the use of P's human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of the project.

(4) Condition C is that—

- (a) the person responsible under the licence (“R”) has taken all reasonable steps to contact—
- (i) the person falling within sub-paragraph (1)(b) (“P”), or
- (ii) in a case where P is dead or R believes on reasonable grounds that P is dead, persons who could give consent for the purposes of sub-paragraph (3)(c), but has been unable to do so, and
- (b) the information relating to P that is available to R does not suggest that P would have objected to the use of P's human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of the project.

(5) The HTA consent provisions apply in relation to consent for the purposes of sub-paragraph (3)(c) as they apply in relation to consent for the purposes of section 3(6)(c) of the Human Tissue Act 2004; and for the purposes of this sub-paragraph the HTA consent provisions are to be treated as if they extended to Scotland.

(6) In sub-paragraph (5) “the HTA consent provisions” means subsections (4), (5), (6), (7) and (8)(a) and (b) of section 27 of the Human Tissue Act 2004.

(7) In this paragraph references to the person responsible under the licence are to be read, in a case where an application for a licence is being made, as references to the person who is to be the person responsible.

(8) Paragraphs 1 to 4 of this Schedule do not apply in relation to a consent given for the purposes of sub-paragraph (3)(c).”

#### *Interpretation*

15 After paragraph 21 (as inserted by paragraph 14 above) insert—

#### *“Interpretation*

22 (1) In this Schedule references to human cells are to human cells which are not—

- (a) cells of the female or male germ line, or
- (b) cells of an embryo.

(2) References in this Schedule to an embryo or a human admixed embryo which was used to bring about the creation of an embryo (“embryo A”) or a human admixed embryo (“human admixed embryo A”) include



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an embryo or, as the case may be, a human admixed embryo which was used to bring about the creation of—

- (a) an embryo or human admixed embryo which was used to bring about the creation of embryo A or human admixed embryo A, and
  - (b) the predecessor of that embryo or human admixed embryo mentioned in paragraph (a), and
  - (c) the predecessor of that predecessor, and so on.
- (3) References in this Schedule to an embryo or a human admixed embryo whose creation may be brought about using an embryo or a human admixed embryo are to be read in accordance with sub-paragraph (2).
- (4) References in this Schedule (however expressed) to the use of human cells to bring about the creation of an embryo or a human admixed embryo include the use of human cells to alter the embryo or, as the case may be, the human admixed embryo.
- (5) References in this Schedule to parental responsibility are—
- (a) in relation to England and Wales, to be read in accordance with the Children Act 1989,
  - (b) in relation to Northern Ireland, to be read in accordance with the Children (Northern Ireland) Order 1995, and
  - (c) in relation to Scotland, to be read as references to parental responsibilities and parental rights within the meaning of the Children (Scotland) Act 1995.
- (6) References in this Schedule to capacity are, in relation to England and Wales, to be read in accordance with the Mental Capacity Act 2005.
- (7) References in this Schedule to the age of 18 years are, in relation to Scotland, to be read as references to the age of 16 years.”

SCHEDULE 4

Section 14

SCHEDULE INSERTED IN THE 1990 ACT AS SCHEDULE 3ZA

“SCHEDULE 3ZA

CIRCUMSTANCES IN WHICH OFFER OF COUNSELLING  
REQUIRED AS CONDITION OF LICENCE FOR TREATMENT

.....  
.....

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VALID FROM 01/10/2009

## SCHEDULE 5

Section 28

### SCHEDULE INSERTED IN THE 1990 ACT AS SCHEDULE 3B

#### “SCHEDULE 3B

#### INSPECTION, ENTRY, SEARCH AND SEIZURE

##### *Inspection of statutory records*

- 1 (1) A duly authorised person may require a person to produce for inspection any records which the person is required to keep by, or by virtue of, this Act.
- (2) Where records which a person is so required to keep are stored in any electronic form, the power under sub-paragraph (1) includes power to require the records to be made available for inspection—
  - (a) in a visible and legible form, or
  - (b) in a form from which they can be readily produced in a visible and legible form.
- (3) A duly authorised person may inspect and take copies of any records produced for inspection in pursuance of a requirement under this paragraph.

##### *Arranging inspections*

- 2 (1) Where a person—
  - (a) makes an enquiry to the Authority which concerns the making of a relevant application by that person, or
  - (b) has made a relevant application to the Authority which the Authority has not yet considered,
 the Authority may arrange for a duly authorised person to inspect any of the premises mentioned in sub-paragraph (3).
- (2) For the purposes of sub-paragraph (1) a “relevant application” means—
  - (a) an application for authorisation for a person to carry on an activity governed by this Act which the person is not then authorised to carry on, or
  - (b) an application for authorisation for a person to carry on any such activity on premises where the person is not then authorised to carry it on.
- (3) The premises referred to in sub-paragraph (1) are—
  - (a) the premises where any activity referred to in sub-paragraph (2) is to be carried on;
  - (b) any premises that will be relevant third party premises for the purposes of any application.
- (4) The power in sub-paragraph (1) is exercisable for purposes of the Authority's functions in relation to licences and third party agreements.

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#### *Entry and inspection of premises*

- 3 (1) A duly authorised person may at any reasonable time enter and inspect any premises to which a licence relates or relevant third party premises.
- (2) The power in sub-paragraph (1) is exercisable for purposes of the Authority's functions in relation to licences and third party agreements.
- 4 (1) Subject to sub-paragraph (2), the Authority shall arrange for any premises to which a licence relates to be inspected under paragraph 3 by a duly authorised person at intervals not exceeding two years.
- (2) The Authority need not comply with sub-paragraph (1) where the premises in question have been inspected in pursuance of paragraph 2 or 3 at any point within the previous two years.

#### *Entry and search in connection with suspected offence*

- 5 (1) If a justice of the peace is satisfied on sworn information or, in Northern Ireland, on a complaint on oath that there are reasonable grounds for believing—
- (a) that an offence under this Act is being, or has been committed on any premises, and
  - (b) that any of the conditions in sub-paragraph (2) is met in relation to the premises,
- the justice of the peace may by signed warrant authorise a duly authorised person, together with any constables, to enter the premises, if need be by force, and search them.
- (2) The conditions referred to are—
- (a) that entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant under this paragraph has been given to the occupier;
  - (b) that the premises are unoccupied;
  - (c) that the occupier is temporarily absent;
  - (d) that an application for admission to the premises or the giving of notice of the intention to apply for a warrant under this paragraph would defeat the object of entry.
- (3) A warrant under this paragraph shall continue in force until the end of the period of 31 days beginning with the day on which it is issued.
- (4) In relation to Scotland—
- (a) any reference in sub-paragraph (1) to a justice of the peace includes a reference to a sheriff, and
  - (b) the reference in that sub-paragraph to “on sworn information” is to be read as a reference to “by evidence on oath”.

#### *Execution of warrants*

- 6 (1) Entry and search under a warrant under paragraph 5 is unlawful if any of sub-paragraphs (2) to (4) and (6) is not complied with.

**Status:** Point in time view as at 13/11/2008. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Human Fertilisation and Embryology Act 2008 is up to date with all changes known to be in force on or before 12 March 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)

- (2) Entry and search shall be at a reasonable time unless the person executing the warrant thinks that the purpose of the search may be frustrated on an entry at a reasonable time.
- (3) If the occupier of the premises to which the warrant relates is present when the person executing the warrant seeks to enter them, the person executing the warrant shall—
  - (a) produce the warrant to the occupier, and
  - (b) give the occupier—
    - (i) a copy of the warrant, and
    - (ii) an appropriate statement.
- (4) If the occupier of the premises to which the warrant relates is not present when the person executing the warrant seeks to enter them, but some other person is present who appears to the person executing the warrant to be in charge of the premises, the person executing the warrant shall—
  - (a) produce the warrant to that other person,
  - (b) give that other person—
    - (i) a copy of the warrant, and
    - (ii) an appropriate statement, and
  - (c) leave a copy of the warrant in a prominent place on the premises.
- (5) In sub-paragraphs (3)(b)(ii) and (4)(b)(ii), the references to an appropriate statement are to a statement in writing containing such information relating to the powers of the person executing the warrant and the rights and obligations of the person to whom the statement is given as may be prescribed by regulations made by the Secretary of State.
- (6) If the premises to which the warrant relates are unoccupied, the person executing the warrant shall leave a copy of it in a prominent place on the premises.
- (7) Where the premises in relation to which a warrant under paragraph 5 is executed are unoccupied or the occupier is temporarily absent, the person executing the warrant shall when leaving the premises, leave them as effectively secured as the person found them.

*Seizure in the course of inspection or search*

- 7 (1) A duly authorised person entering and inspecting premises under paragraph 3 may seize anything on the premises which the duly authorised person has reasonable grounds to believe may be required for—
  - (a) the purposes of the Authority's functions relating to the grant, revocation, variation or suspension of licences, or
  - (b) the purpose of taking appropriate control measures in the event of a serious adverse event or serious adverse reaction.
- (2) A duly authorised person entering or searching premises under a warrant under paragraph 5 may seize anything on the premises which the duly authorised person has reasonable grounds to believe may be required for the purpose of being used in evidence in any proceedings for an offence under this Act.

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(3) Where a person has power under sub-paragraph (1) or (2) to seize anything, that person may take such steps as appear to be necessary for preserving that thing or preventing interference with it.

(4) The power under sub-paragraph (1) or (2) includes power to retain anything seized in exercise of the power for so long as it may be required for the purpose for which it was seized.

(5) Where by virtue of sub-paragraph (1) or (2) a person (“P”) seizes anything, P shall leave on the premises from which the thing was seized a statement giving particulars of what P has seized and stating that P has seized it.

#### *Supplementary provision*

8 (1) Power under this Schedule to enter and inspect or search any premises includes power to take such other persons and equipment as the person exercising the power reasonably considers necessary.

(2) Power under this Schedule to inspect or search any premises includes, in particular—

- (a) power to inspect any equipment found on the premises,
- (b) power to inspect and take copies of any records found on the premises, and
- (c) in the case of premises to which a licence relates or premises which are relevant third party premises in relation to a licence, power to observe the carrying-on of the licensed activity on the premises.

(3) Any power under this Schedule to enter, inspect or search premises includes power to require any person to afford such facilities and assistance with respect to matters under that person's control as are necessary to enable the power of entry, inspection or search to be exercised.

9 (1) A person's right to exercise a power under this Schedule is subject to production of evidence of the person's entitlement to exercise it, if required.

(2) As soon as reasonably practicable after having inspected premises in pursuance of arrangements made under paragraph 2 or after having exercised a power under this Schedule to inspect or search premises, the duly authorised person shall—

- (a) prepare a written report of the inspection, or as the case may be, the inspection and search, and
- (b) if requested to do so by the appropriate person, give the appropriate person a copy of the report.

(3) In sub-paragraph (2), the “appropriate person” means—

- (a) in relation to premises to which a licence relates, the person responsible, or
- (b) in relation to any other premises, the occupier.

#### *Enforcement*

10 A person who—

- (a) fails without reasonable excuse to comply with a requirement under paragraph 1(1) or 8(3), or

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(b) intentionally obstructs the exercise of any right under this Schedule, is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

*Interpretation*

11 In this Schedule—

- (a) “duly authorised person”, in the context of any provision, means a person authorised by the Authority to act for the purposes of that provision, and
- (b) “licensed activity”, in relation to a licence, means the activity which the licence authorises to be carried on.”

SCHEDULE 6

Section 56

AMENDMENTS RELATING TO PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION  
.....

SCHEDULE 7

Section 65

MINOR AND CONSEQUENTIAL AMENDMENTS

VALID FROM 01/10/2009

*Congenital Disabilities (Civil Liability) Act 1976 (c. 28)*

1 In section 4 of the Congenital Disabilities (Civil Liability) Act 1976 (interpretation), in subsection (2), for “section 1 of the Human Fertilisation and Embryology Act 1990” substitute “ section 1(1) of the Human Fertilisation and Embryology Act 1990 and any regulations under section 1(6) of that Act ”.

*Human Fertilisation and Embryology Act 1990 (c. 37)*

VALID FROM 01/10/2009

2 In section 2 of the 1990 Act (other terms)—

- (a) in subsection (1), in the definition of “store”, for “or embryos” substitute “ , embryos or human admixed embryos ”, and
- (b) in subsection (2), for “or gametes” substitute “ , gametes or human admixed embryos ”.

**Status:** Point in time view as at 13/11/2008. This version of this Act contains provisions that are not valid for this point in time.

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	VALID FROM 01/10/2009
3	<p>In section 7 of the 1990 Act (reports to Secretary of State) for subsection (1) substitute—</p> <p>“(1) The Authority shall prepare—</p> <ul style="list-style-type: none"><li>(a) a report for the period beginning with the 1 August preceding the relevant commencement date (or if that date is a 1 August, beginning with that date) and ending with the next 31 March, and</li><li>(b) a report for each succeeding period of 12 months ending with 31 March.</li></ul> <p>(1A) In subsection (1)(a) “the relevant commencement date” means the day on which paragraph 3 of Schedule 7 to the Human Fertilisation and Embryology Act 2008 comes into force.</p> <p>(1B) The Authority shall send each report to the Secretary of State as soon as practicable after the end of the period for which it is prepared.”</p>
	VALID FROM 01/10/2009
4	<p>Omit section 10 of the 1990 Act (licensing procedure).</p>
	VALID FROM 01/10/2009
5	<p>In section 13A of the 1990 Act (conditions of licences for non-medical fertility services), omit subsection (4).</p>
	VALID FROM 01/10/2009
6	<p>In section 14A of the 1990 Act (conditions of licences: human application), in subsection (1)—</p> <ul style="list-style-type: none"><li>(a) omit the “and” at the end of paragraph (a), and</li><li>(b) at the end of paragraph (b) insert “, and</li><li>(c) every licence under paragraph 3 of that Schedule, so far as authorising activities in connection with the derivation from embryos of stem cells that are intended for human application.”</li></ul>
	VALID FROM 01/10/2009
7	<p>In section 15 of the 1990 Act (conditions of research licences) after subsection (4) insert—</p> <p>“(5) If by virtue of paragraph 20 of Schedule 3 (existing cells or cell lines) qualifying cells, as defined by paragraph 20(2) of that Schedule, of a person (“P”) are used to bring about the creation <i>in vitro</i> of an</p>

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	embryo or human admixed embryo without P's consent, steps shall be taken to ensure that the embryo or human admixed embryo cannot subsequently be attributed to P.”
	VALID FROM 01/10/2009
8	Omit section 22 of the 1990 Act (temporary suspension of licence).
	VALID FROM 01/10/2009
9	In section 23 of the 1990 Act (directions: general)— (a) in subsection (5), for paragraph (a) substitute— “(a) in respect of any licence (including a licence which has ceased to have effect), by serving notice of the directions on the person— (i) who is the person responsible or the holder of the licence, if different, or (ii) who was the person responsible or the holder of the licence, if different,” and (b) omit subsection (6).
	VALID FROM 01/10/2009
10	(1) Section 31A of the 1990 Act (the Authority's register of licences) is amended as follows. (2) In subsection (1)— (a) omit the “and” at the end of paragraph (a), and (b) at the end of paragraph (b) insert “, and (c) every licence under paragraph 3 of Schedule 2 authorising activities in connection with the derivation from embryos of stem cells that are intended for human application.”. (3) In subsection (2)(c), for “, if applicable, the nominal licensee” substitute “ the name of the holder of the licence (if different) ”.
	VALID FROM 01/10/2009
11	In section 32 of the 1990 Act (information to be provided to Registrar General), in subsection (3), for “33” substitute “ 33A ”.
	VALID FROM 01/10/2009
12	In section 34 of the 1990 Act (disclosure in the interests of justice), in subsection (1), for “section 31(2)(b)” substitute “ section 31(2)(c) to (e) ”.



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VALID FROM 01/10/2009

- 13 In section 47 of the 1990 Act (index)—
- (a) in the first column, after “embryo” insert “ (except in section 4A or in the term “human admixed embryo”) ”,
  - (b) in the first column, after “gametes, eggs or sperm”, insert “ (except in section 4A) ”,
  - (c) in the first column, in the entry relating to “store”, after “embryos” insert “ , human admixed embryos ”,
  - (d) at the appropriate places insert—
- |   |                    |
|---|--------------------|
| “Appeals committee                      | Section 20A(2)”    |
| “Human admixed embryo                   | Section 4A(6)”     |
| “Nuclear DNA (in relation to an embryo) | Section 2(1)”, and |
- (e) omit the entries relating to “licence committee” and “nominal licensee”.

VALID FROM 01/10/2009

- 14 In section 48 of the 1990 Act (application to Northern Ireland) for “sections 33(6)(h) and” substitute “ sections 33A(2)(r) and ”.

- 15 In Schedule 1 to the 1990 Act (the Authority: supplementary provision)—
- (a) in paragraph 9(1), for “The” substitute “ Subject to any provision of this Act, the ”,
  - (b) in paragraph 10(3), omit “or any licence committee”, and
  - (c) after paragraph 14, insert—

*“Application of Statutory Instruments Act 1946*

- 15 The Statutory Instruments Act 1946 applies to any power to make orders or regulations conferred by an Act on the Authority as if the Authority were a Minister of the Crown.”

**Commencement Information**

- I74** Sch. 7 para. 15 wholly in force at 1.10.2009; Sch. 7 para. 15 not in force at Royal Assent see s. 68; Sch. 7 para. 15(c) in force for certain purposes at 6.4.2009 by S.I. 2009/479, art. 5(g) (with Sch.); Sch. 7 para. 15 in force at 1.10.2009 otherwise by S.I. 2009/2232, art. 2(y)

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VALID FROM 01/10/2009

*Age of Legal Capacity (Scotland) Act 1991 (c. 50)*

16 In section 2 of the Age of Legal Capacity (Scotland) Act 1991, after subsection (4) (which provides for an exception to the general rule about the age of legal capacity in relation to surgical, medical or dental procedure or treatment) insert—

“(4ZA) For the purposes of subsection (4), the storage of gametes in accordance with the Human Fertilisation and Embryology Act 1990 is to be treated as a medical procedure.

(4ZB) A person under the age of 16 years shall have legal capacity to consent to the use of the person's human cells in accordance with Schedule 3 to the Human Fertilisation and Embryology Act 1990 for the purposes of a project of research where the person is capable of understanding the nature of the research; and in this subsection “human cells” has the same meaning as in that Schedule.”

VALID FROM 01/10/2009

*Children (Scotland) Act 1995 (c. 36)*

17 In section 15 of the Children (Scotland) Act 1995 (interpretation of Part 1), after subsection (6) insert—

“(7) No provision in this Part of this Act shall permit a person to give a consent to the storage of gametes under the Human Fertilisation and Embryology Act 1990 on behalf of a child.”

VALID FROM 01/10/2009

*Adults with Incapacity (Scotland) Act 2000 (asp 4)*

18 After section 84 of the Adults with Incapacity (Scotland) Act 2000 insert—

**“84A Application to storage of gametes without adult's consent where adult is incapable**

(1) The storage of gametes under paragraph 10 of Schedule 3 to the Human Fertilisation and Embryology Act 1990 (storage of gametes without patient's consent where patient is incapable) is to be treated as an intervention in the affairs of an adult under this Act.

(2) Sections 2 to 5, 8, 11, 14 and 85 of this Act apply to a registered medical practitioner's decision under that paragraph as they apply to decisions taken for the purposes of this Act.

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- (3) Section 52 of this Act applies to a practitioner's decision under that paragraph as it applies to decisions taken for the purposes of section 47 of this Act.
- (4) Part 5 of this Act (other than section 52) does not apply to the storage of gametes under that paragraph.
- (5) Section 83 of this Act applies to a practitioner's decision under that paragraph as if the practitioner were exercising powers under this Act.
- (6) Nothing in this section authorises any person, other than the person whose gametes are to be stored, to consent to the storage of the gametes.

#### **84B Application to use of human cells to create an embryo in vitro without adult's consent**

- (1) The use of an adult's human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of a project of research—
  - (a) without the adult's consent, and
  - (b) where the adult is incapable,is to be treated as an intervention in the affairs of an adult under this Act.
- (2) Sections 2 to 5, 8, 11, 14 and 85 of this Act apply to decisions made under paragraphs 16 and 18 of Schedule 3 to the Human Fertilisation and Embryology Act 1990 (when consent to the use of human cells is not required due to adult being incapable of consenting) as they apply to decisions taken for the purposes of this Act.
- (3) Section 51 of this Act does not apply to the use of an adult's human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of a project of research.
- (4) Section 83 of this Act applies to a decision made under paragraphs 16 and 18 of Schedule 3 to the Human Fertilisation and Embryology Act 1990 as if the person making the decision were exercising powers under this Act.
- (5) Expressions used in this section and in Schedule 3 to the Human Fertilisation and Embryology Act 1990 have the same meaning in this section as in that Schedule.”

VALID FROM 01/10/2009

#### *Criminal Justice and Police Act 2001 (c. 16)*

19

In section 57 of the Criminal Justice and Police Act 2001 (retention of seized items), in subsection (1)(k), for “section 40(4) of” substitute “ paragraph 7(4) of Schedule 3B to ”.

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20	In section 66 of the Criminal Justice and Police Act 2001 (general interpretation of Part 2)— (a) in subsection (4), after paragraph (j) insert— “(ja) paragraph 5 of Schedule 3B to the Human Fertilisation and Embryology Act 1990.”, and (b) in subsection (5), omit paragraph (g).
21	In Schedule 1 to the Criminal Justice and Police Act 2001 (powers of seizure) for paragraph 52 substitute— “52 Each of the powers of seizure conferred by the provisions of paragraph 7(1) and (2) of Schedule 3B to the Human Fertilisation and Embryology Act 1990.”

VALID FROM 01/10/2009

*Human Tissue Act 2004 (c. 30)*

22	In section 1 of the Human Tissue Act 2004 (authorisation of activities for scheduled purposes)— (a) after subsection (9) insert— “(9A) Subsection (1)(f) does not apply to the use of relevant material for the purpose of research where the use of the material requires consent under paragraph 6(1) or 12(1) of Schedule 3 to the Human Fertilisation and Embryology Act 1990 (use of human cells to create an embryo or a human admixed embryo) or would require such consent but for paragraphs 16 and 20 of that Schedule.”, and (b) after subsection (10) insert— “(10A) In the case of an activity in relation to which subsection (8) has effect, subsection (10)(c) is to be read subject to any requirements imposed by Schedule 3 to the Human Fertilisation and Embryology Act 1990 in relation to the activity.”
23	In section 14 of the Human Tissue Act 2004 (remit of the Human Tissue Authority), after subsection (2) insert— “(2ZA) The activities within the remit of the Authority do not include the use, for a scheduled purpose, of relevant material where the use of the material requires consent under paragraph 6(1) or 12(1) of Schedule 3 to the Human Fertilisation and Embryology Act 1990 (use of human cells to create an embryo or a human admixed embryo) or would require such consent but for paragraphs 16 and 20 of that Schedule.”
24	In section 54 of the Human Tissue Act 2004 (general interpretation), for subsection (6), substitute— “(6) In this Act “embryo” and “gametes” have the same meaning as they have by virtue of section 1(1), (4) and (6) of the Human Fertilisation

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and Embryology Act 1990 in the other provisions of that Act (apart from section 4A).”

VALID FROM 01/10/2009

*Mental Capacity Act 2005 (c. 9)*

25 In section 30 of the Mental Capacity Act 2005 (research), after subsection (3) insert—

“(3A) Research is not intrusive to the extent that it consists of the use of a person's human cells to bring about the creation *in vitro* of an embryo or human admixed embryo, or the subsequent storage or use of an embryo or human admixed embryo so created.

(3B) Expressions used in subsection (3A) and in Schedule 3 to the Human Fertilisation and Embryology Act 1990 (consents to use or storage of gametes, embryos or human admixed embryos etc.) have the same meaning in that subsection as in that Schedule.”

SCHEDULE 8

Section 66

REPEALS AND REVOCATIONS

**Commencement Information**

**I75** Sch. 8 wholly in force at 6.4.2010; Sch. 8 not in force at Royal Assent see s. 68; Sch. 8 in force for certain purposes at 6.4.2009 and at 1.9.2009 for further certain purposes by S.I. 2009/479, arts. 5(a), 6(1)(e)(2)(3) (with Sch.); Sch. 8 in force for further certain purposes at 1.10.2009 by S.I. 2009/2232, art. 2(z); Sch. 8 in force at 6.4.2010 otherwise by S.I. 2010/987, art. 2(h)

VALID FROM 01/09/2009

**Status:**

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**Changes to legislation:**

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