

# HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008

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## EXPLANATORY NOTES

### OVERVIEW

10. The purpose of the Act is to amend the law relating to assisted reproduction treatment and embryo research. The Act amends many of the provisions of the 1990 Act, but the main features of the existing model of regulation are retained.
11. The Act is in three Parts. Part 1 comprises amendments to the 1990 Act, Part 2 makes provision about who is to be treated as the parent of a child who is born, after the coming into force of the Part, as a result of assisted reproduction treatments, and Part 3 makes miscellaneous and general provision.

### Part 1

12. **Part 1** (including Schedules 1 to 5) makes a range of amendments to the 1990 Act to take account of scientific developments, to reflect changes in social attitudes and to update the HFEA's ability to regulate according to principles of better regulation.
13. To assist the reader of the Act, the Department of Health has produced an illustrative consolidated text of the 1990 Act as amended. This is available on the Department of Health website. This includes amendments made by the 2007 Regulations and shows the effect of the amendments made by the Act. The text has no official status.

### Part 2

14. **Part 2** replaces existing provision under the 1990 Act to determine legal parenthood for future cases involving assisted reproduction. The Act introduces a new concept of parenthood for a mother's female partner in certain circumstances, making equivalent provision to that for opposite sex couples.
15. The 1990 Act provided that where an unmarried couple were "treated together" in a licensed clinic using donated sperm, the male partner would be regarded as the father of any child born as a result. "Treated together" in this context is a somewhat loose concept. Part 2 makes provision that both the prospective mother and the man (or in the case of persons in a same-sex relationship, the woman) who is intended to be the second parent of the child must consent in writing to what is intended.
16. **Part 2** also makes provision in relation to parenthood in respect of children born after a surrogacy arrangement, which is intended to put same sex couples and unmarried opposite sex couples in the same position as married couples.

### Part 3

17. **Part 3** of the Act amends the Surrogacy Arrangements Act 1985, miscellaneous provisions and general provisions about order and regulation-making powers, powers to make consequential and transitional provisions, and commencement.