These notes refer to the Human Fertilisation and Embryology Act 2008 (c.22) which received Royal Assent on 13 November 2008

HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Amendments of Human Fertilisation and Embryology Act 1990

Section 11: Activities that may be licensed

Embryo testing

48. Paragraph 3 of Schedule 2 to the Act adds to Schedule 2 to the 1990 Act new paragraphs 1ZA to 1ZC which relate to embryo testing and practices designed to secure that a resulting child will be of one sex rather than the other.

49. Embryo testing can involve invasive procedures such as embryo biopsy, involving removal of a cell or cells from the embryo for subsequent analysis. The effect of the new provisions is that testing of an embryo can only be authorised for the purposes in new paragraph 1ZA(1)(a) to (e). For example, sub-paragraph (1)(a) could authorise testing to establish whether an embryo contained an abnormal number of chromosomes likely to result in miscarriage, sometimes referred to as pre-implantation genetic screening. Sub-paragraph (1)(b) could, for example, authorise testing to establish the presence or absence of a genetic disorder in a case where there was a particular risk of such an abnormality being present, sometimes referred to as preimplantation genetic diagnosis. A particular risk might be evidenced, for example, by a family history of the disease.

50. Sub-paragraph (1)(c) could authorise establishing the sex of an embryo where there is a particular risk that any resulting child will have or develop a gender-related serious physical or mental disability, serious illness or other serious medical condition. This provision enables sex selection not only for conditions which are clearly linked to sex chromosomes, for example Duchenne Muscular Dystrophy but also where there is a particular risk of gender-related conditions for example a strong family history of breast cancer where the mother has also been affected (and therefore is probably a carrier of the faulty gene), and wishes to avoid passing this condition on to a daughter.

51. Paragraph 1ZA(1)(b) is subject to the further provisions set out in sub-paragraph (2). Sub-paragraph (2) provides that in order for testing to be authorised under sub-paragraph (1)(b), the HFEA must be satisfied 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.

52. A provision of section 14 is closely related to the provisions on embryo testing discussed above. Section 14 amends the 1990 Act to make it a condition of a treatment licence that, in the circumstances described, embryos that are known to have an abnormality as described are not to be preferred to embryos not known to have such an abnormality. The same restriction is also applied to the selection of persons as gamete or embryo donors. Similarly for sex selection, embryos of a particular sex that are at a particular

risk, compared to embryos of that sex in general, of a gender-related disability, illness or medical condition, should not be preferred to those that are not known to be at risk (see note on section 14).