

HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Parenthood in Cases Involving Assisted Reproduction

Section 56: Amendments relating to parenthood in cases involving assisted reproduction

Amendments in Part 2 of Schedule 6

Children and Young Persons (Scotland) Act 1937

223. **Paragraph 41** amends section 110(1) of the Children and Young Persons (Scotland) Act 1937 (“the 1937 Act”). This amendment provides that a second female parent is to be considered to have parental responsibilities for the purpose of offences under the 1937 Act, even where they have not registered for such responsibility under section 3(1)(d) of the Children (Scotland) Act 1995. This provides parity with the position for unmarried fathers who have not registered their parental rights and responsibilities under section 3(1)(b) of the Children (Scotland) Act 1995.

Registration of Births, Deaths and Marriages (Scotland) Act 1965

224. **Paragraphs 42** of Schedule 6 amends section 14 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (“the 1965 Act”) so that the provisions regarding the obligation to provide information relating to a birth extend to include a woman who is the second female parent of a child by virtue of section 42 of the Act.

225. **Paragraph 43** substitutes existing section 18ZA of the 1965 Act (which governs circumstances in which a man is treated as the father if fertility treatment took place after his death) with a new provision which deals with both fathers and second female parents in that situation.

226. **Paragraph 44** inserts new section 18B into the 1965 Act to apply equivalent provisions to those which deal with registration of a birth by an unmarried father to a person who is the second female parent by virtue of section 43 of the Act.

227. **Paragraph 45** of Schedule 6 amends section 20 of the 1965 Act to accommodate within Scottish registration law the new category of second female parent created by section 43 of the Act.

Family Law (Scotland) Act 1985

228. **Paragraphs 46** and **47** of Schedule 6 amend sections 9(1)(c)(ii) and 27(1) of the Family Law (Scotland) Act 1985 to extend references to a “child of the family” in relation to civil partners to include a child who is a child of both partners, by virtue of sections 33 and 42 (where the partners were in a civil partnership at the time of treatment).

Children (Scotland) Act 1995

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

229. Paragraphs 48 to 50 of Schedule 6 amend sections 1(1), 2(1) and 3 of the Children (Scotland) Act 1995 (“the 1995 Act”) to deal with circumstances in which a second female parent will have legal parental responsibility for, and parental rights in relation to, a child.
230. Paragraphs 51 and 52 of Schedule 6 amend section 4 and section 11 of the 1995 Act in order that a second female parent who is not in a civil partnership can acquire parental responsibility, by making a parental responsibility agreement with the child’s mother, or by obtaining a court order.
231. Paragraph 53 of Schedule 6 amends section 12(4)(b) of the 1995 Act to extend the definition of “child of the family” in relation to civil partners. The extended definition includes a child who is a child of both partners, by virtue of sections 33 and 42 (where the partners were in a civil partnership at the time of treatment).

Criminal Law (Consolidation) (Scotland) Act 1995

232. Paragraph 55 of Schedule 6 amends section 1(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 so that the offence of incest applies as between mothers, fathers, second female parents (on the one hand) and their children (on the other) where that legal relationship is created as a result of this Act.

Adoption and Children (Scotland) Act 2007

233. Paragraph 56 substitutes section 30(7)(c) of the Adoption and Children (Scotland) Act 2007 to extend the circumstances in which a child can be adopted by one person, who is the child’s natural parent, to include those where by virtue of section 28 of the 1990 Act (disregarding subsections (5A) to (5I) of that section) or sections 34 to 47 of the Act (disregarding sections 39, 40 and 46) there is no other parent of the child.