

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

189. [Section 56](#) introduces Schedule 6, which contains amendments relating to parenthood in cases involving assisted reproduction.

Amendments in [Part 1](#) of [Schedule 6](#)

Population (Statistics) Act 1938

190. [Paragraph 1](#) of Schedule 6 amends the Population (Statistics) Act 1938 to enable the statistical data collected at birth registration, where a child is born to female same-sex parents, to include information relating to the age of the second female parent and the date of formation of any civil partnership.

Births and Deaths Registration Act 1953

191. [Paragraphs 2](#) and [3](#) of Schedule 6 amend sections 1 and 2 of the Births and Deaths Registration Act 1953 (particulars of births to be registered and information concerning birth to be given to registrar within 42 days) (“the 1953 Act”) so that the provisions extend to include a woman who is the parent of a child by virtue of section 42 or 43 of the Act. She is to be treated as the father for the purposes of the provisions.
192. [Paragraphs 4](#) and [5](#) amend sections 9 and 10 of the 1953 Act (registration of father where parents are not married) so as to make provision for registration of the birth of a child where the second female parent of the child is not the civil partner of the mother (i.e. where section 43 of the Act applies).
193. [Paragraph 6](#) substitutes section 10ZA of the 1953 Act (registration of father by virtue of certain provisions of the 1990 Act) with a new section that applies both to fathers and to women who are to be treated as a parent by virtue of section 46 of the Act.
194. [Paragraph 7](#) amends section 10A of the 1953 Act (re-registration where parents are not married) so that it applies to re-registration where a woman is a parent of a child by virtue of section 43 or 46(1) or (2) of the Act.
195. [Paragraph 8](#) amends section 13 of the 1953 Act (registration of name or of alteration of name) so that a woman who is a parent of a child by virtue of section 42 or 43 of the Act is treated in the same way as a father of a child.
196. [Paragraph 9](#) amends section 14 of the 1953 Act (re-registration of births of legitimated persons) to reflect the amendments of the Legitimacy Act 1976 as outlined below so

that section 14 applies in the case of a legitimated person who is the child of a person who is the parent of the child by virtue of section 43 of the Act.

197. [Paragraph 10](#) amends section 29A of the 1953 Act (alternative procedure for certain corrections of the register) so as to provide for correction of the register where a woman is wrongly registered as a parent of a person by virtue of section 42, 43 or 46(1) or (2) of the Act.

Registration of Births, Deaths and Marriages (Special Provisions) Act 1957

198. [Paragraph 11](#) of Schedule 6 extends section 3A of the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 (alternative procedure for certain corrections to the register) (“the 1957 Act”) so as to provide for correction of the register where a woman is wrongly registered as a parent of a person by virtue of section 42, 43 or 46(1) or (2) of the Act.
199. [Paragraph 12](#) amends section 5 of the 1957 Act (registration or re-registration of births of legitimated persons in the Service Departments Registers) to make provision in respect of the Service Departments Registers for a second female parent of a child, by virtue of section 43 of the Act, to register or re-register a child following the subsequent formation of a civil partnership between the child’s parents.

Family Law Reform Act 1969

200. [Paragraph 13](#) of Schedule 6 amends the definition of “excluded” in section 25 of the Family Law Reform Act 1969 (interpretation of Part 3) so as to include a reference to sections 33 to 47 of the Act. The definition is relevant to section 20 of the 1969 Act which concerns the situation where the parentage of any person falls to be determined in civil proceedings. A report to the court must state whether any party to whom the report relates is or is not excluded by the results from being the father or mother of the person whose parentage is to be determined.

Congenital Disabilities (Civil Liability) Act 1976

201. [Paragraph 14](#) of Schedule 6 amends section 1 of the Congenital Disabilities (Civil Liability) Act 1976 (civil liability to a child who is born disabled) (“the 1976 Act”) to extend the reference to “father” to include a woman who is the second female parent of a child by virtue of section 42 or 43 of the Act.
202. [Paragraph 15](#) amends section 4 of the 1976 Act (interpretation) so that references in section 1 of the Act to a parent include a person who would be a parent, but for sections 33 to 47 of the Act.

Legitimacy Act 1976

203. [Paragraph 16](#) insets new section 2A in the Legitimacy Act 1976 and paragraphs 17 to 19 amend sections 3, 9 and 10 of that Act. The effect of the amendments is to enable women who enter into a civil partnership, and who have had children together previously by assisted conception, to legitimise those children as from the date of the formation of the civil partnership.

Magistrates’ Courts Act 1980

204. [Paragraph 20](#) amends section 65(1)(na) of the Magistrates’ Courts Act 1980 (meaning of family proceedings) by replacing a reference to section 30 of the 1990 Act (which is repealed by the Act) with a reference to section 54 of the Act (parental orders).

Supreme Court Act 1981

205. [Paragraph 21](#) amends Schedule 1 to the Supreme Court Act 1981 to include parental orders under section 54 of the Act as matters to be assigned to the Family Division of the High Court.

British Nationality Act 1981

206. [Paragraph 22](#) amends subsection (9A) of section 50 of the British Nationality Act 1981 (meaning of a child’s father) to include, as “father” of a child for the purposes of that Act, the person who is to be treated as father of the child under section 28 of the 1990

Act or section 35 or 36 of the Act or as a second female parent of the child under section 42 or 43.

Family Law Act 1986

207. [Paragraph 23](#) inserts a reference to the amendment inserting the new section 2A of the Legitimacy Act 1976 into section 56(5)(a) of the Family Law Act 1986 (declarations of the High Court or a county court regarding the parentage, legitimacy or legitimation of a person). This amendment extends the definition of a “legitimated person” to include someone who becomes legitimated under the new section 2A.

Family Law Reform Act 1987

208. [Paragraph 24](#) amends section 1 of the Family Law Reform Act 1987 (general principles) (“the 1987 Act”) so that references in that Act and Acts passed subsequently to someone whose father and mother were married to each other at the time of birth are extended to include a person who was conceived through assisted conception at a time when their mother was in a civil partnership with another woman, or whose mother and second female parent were treated in a licensed clinic and had a parenthood agreement in force at the time the person’s mother was treated and who were civil partners either at the time of the child’s birth or at any time between treatment and the child’s birth. The amendments provide for civil partnerships which are void to be treated as valid for the purposes of this provision, where either or both of the parties reasonably believed that the civil partnership was valid.
209. [Paragraph 25](#) amends section 18 of the 1987 Act (succession on intestacy) so that references to “father” include a second female parent under section 43 not in a civil partnership. Section 18 sets out the presumption that a person is not survived by a unmarried father who was not married to a child’s mother at the time of birth unless the contrary is shown, in cases of intestacy.

Children Act 1989

210. [Paragraph 26](#) amends section 2 of the Children Act 1989 (“the 1989 Act”) to enable a second female parent to have parental responsibility for a child. A second female parent will have parental responsibility automatically where she and the mother of the child are in a civil partnership at the time of the fertility treatment, or where the mother and second female parent were civil partners either by the time of the child’s birth or at any time between treatment and the child’s birth. The second female parent will also have parental responsibility if she acquires it in accordance with the provisions of the Act.
211. [Paragraph 27](#) inserts a new section 4ZA into the 1989 Act (acquisition of parental responsibility by second female parent under section 43). This new section enables a second female parent to acquire parental responsibility by registering as the child’s parent in the register of births, by making a parental responsibility agreement with the child’s mother, or by obtaining a court order.
212. [Paragraph 28](#) inserts in section 12 of the 1989 Act (residence orders and parental responsibility) a new subsection (1A) which replicates for second female parents the provision for fathers in subsection (1) of that section. This means that where a court makes a residence order in favour of a second female parent under section 43 and she does not already have parental responsibility the court must also make a parental responsibility order under new section 4ZA.
213. [Paragraph 29](#) amends section 91 of the 1989 Act (duration of orders) so that an order or agreement under new section 4ZA continues in force until the child is 18 unless it is brought to an earlier end.
214. [Paragraphs 30 and 31](#) make minor amendments to section 104 (regulations and orders) and section 105 (interpretation) to take account of new section 4ZA.
215. [Paragraph 32](#) extends references in Schedule 1 to the 1989 Act (financial provision for children) so that references to a child’s father will also apply to a second female parent.

Human Fertilisation and Embryology Act 1990

216. [Paragraph 33](#) amends section 32 of the 1990 Act to take account of children with a second female parent under section 42 or 43 in cases where the Act enables the HFEA to comply with a request from the Registrar General to disclose information from the HFEA's register in respect of the parenthood of a child.
217. [Paragraph 35](#) amends section 35 of the 1990 Act (disclosure of information: congenital disabilities) to update the reference to the provisions which determine the legal parenthood of a child if a court makes an order requiring the HFEA to disclose information from the HFEA's register for the purposes of proceedings under the Congenital Disabilities (Civil Liability) Act 1976.

Child Support Act 1991

218. [Paragraph 36](#) of Schedule 6 amends section 26 of the Child Support Act 1991 (disputes about parentage) to include a reference to parenthood acquired via the new provisions for parental orders in section 54 of the Act; and also to the new parenthood provisions in Part 2 of the Act.

Family Law Act 1996

219. [Paragraph 37](#) amends section 63(2)(h) of the Family Law Act 1996 (definition of family proceedings) by replacing a reference to section 30 of the 1990 Act (which is repealed by the Act) with a reference to section 54 (parental orders) of the Act.

Access to Justice Act 1999

220. [Paragraph 38](#) amends paragraph 2(3)(f) of Schedule 2 to the Access to Justice Act 1999 (community legal services: excluded services) by replacing a reference to section 30 of the 1990 Act (which is repealed by the Act) with a reference to section 54 (parental orders) of the Act.

Adoption and Children Act 2002

221. [Paragraph 39](#) amends section 51 of the Adoption and Children Act 2002 (adoption by one person) which refers to cases where by virtue of section 28 of the 1990 Act (disregarding subsections (5A) to (5I) of that section) the child has no other parent, to include a references to cases where by virtue of sections 34 to 47 of the Act (disregarding sections 39, 40 and 46) there is no other parent.

Mental Capacity Act 2005

222. [Paragraph 40](#) amends section 27 of the Mental Capacity Act 2005 (family relationships) to provide that the provisions of the Mental Capacity Act 2005 do not enable a decision on the giving of consent under the Act to be made on behalf of another person.

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

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.

Amendments in Part 3 of Schedule 6

Legitimacy Act (Northern Ireland) 1928

234. [Paragraph 57](#) of Schedule 6 amends section 1 of the Legitimacy Act (Northern Ireland) 1928 to provide for the legitimation of a person born to a woman as a result of assisted conception if the woman had a parenthood agreement in place with a second female parent at the time of the effective treatment in a licensed clinic, and she was not, at the time the child was born, in a civil partnership with that woman, but subsequently enters a civil partnership with her, provided that the second female parent is domiciled in Northern Ireland. The legitimation takes effect from the date of the formation of the civil partnership.
235. [Paragraph 58](#) amends section 8 of the Legitimacy Act (Northern Ireland) 1928 so that where a child is born as a result of assisted conception in a licensed clinic and a parenthood agreement is in place between the child's mother and a second female parent, and the couple are not civil partners at the time of the child's birth, but subsequently enter a civil partnership, and the second female parent who becomes a civil partner is domiciled outside Northern Ireland, and the law of her country of domicile legitimises

that child, the child, if living, shall, in Northern Ireland, be legitimated from the date of the formation of the civil partnership.

Births and Deaths Registration (Northern Ireland) Order 1976

236. [Paragraph 60](#) of Schedule 6 amends Article 10 of the Birth and Deaths Registration (Northern Ireland) Order 1976 to provide that the references to 'father' in Article 10(3) and (4) apply when a child who was conceived by assisted conception has a parent who is the civil partner of her mother, or has a second female parent because a parenthood agreement was in place at the time of the effective assisted conception treatment.
237. [Paragraph 61](#) makes provision for the various ways in which a birth may be registered, where a mother and second female parent under section 43 have a child through assisted conception in a licensed clinic, are not civil partners but a parenthood agreement is in place. The registration may be made either by the couple together or separately, with appropriate formal declarations if the other party is not present, including as appropriate the provision of the parenthood agreement.
238. [Paragraph 62](#) provides for the registration of a birth where a civil partner or intended female parent with a parenthood agreement in place dies before the fertility treatment which results in the birth of a child.
239. [Paragraphs 63](#) and [64](#) provide for the re-registration of births where a child is born as a result of assisted conception to female civil partners, or to a female couple where a parenthood agreement is in place, and there is no other person who is, in law, the father or parent of the child.
240. Paragraph 66 amends Article 37 of the 1976 Order by extending the definition of "qualified applicant" to include a second female parent in cases where the second female parent has parental responsibility for the child whether or not she is the civil partner of the child's mother.

Family Law Reform (Northern Ireland) Order 1977

241. [Paragraph 67](#) amends Article 13 of the Family Law Reform (Northern Ireland) Order 1977 to ensure that it is clear that a person will not be excluded as the legal parent of a child following DNA tests if they are a parent by virtue of sections 33 to 47 of the Act.

Adoption (Northern Ireland) Order 1987

242. [Paragraph 68](#) amends paragraph 3 of Article 15 of the 1987 Order to extend the reference in that provision to cases where by virtue of section 28 of the 1990 Act (disregarding subsections (5A) to (5I) of that section) the child has no parent other than the mother, to include those where there is no other parent of the child by virtue of sections 34 to 47 of the Act (disregarding sections 39, 40 and 46).

Child Support (Northern Ireland) Order 1991

243. [Paragraph 69](#) of Schedule 6 amends Article 27 of the Child Support (Northern Ireland) Order 1991 to include a reference to parenthood acquired via the new provisions for parental orders in section 54 of the Act; and also to the other parenthood provisions in Part 2 of the Act.

Children (Northern Ireland) Order 1995

244. [Paragraph 71](#) amends Article 5 of the Children (Northern Ireland) Order 1995 to provide that a mother and a second female parent who are civil partners shall have parental responsibility for a child born through assisted conception. Where the second female parent of a child is not the civil partner of the child's mother that person shall have parental responsibility for the child if she has acquired it under Article 7 of the 1995 Order.
245. [Paragraph 72](#) amends Article 7 of the Children (Northern Ireland) Order 1995 to provide for the means whereby a second female parent under section 43 of a child conceived through assisted conception who does not become a civil partner of the child's

mother, acquires parental responsibility; if she is registered as a parent of that child, or makes a parental responsibility agreement with the child's mother, or is given parental responsibility by a court.

246. [Paragraph 73](#) replaces a reference in Article 8(4)(g) of the Children (Northern Ireland) Order 1995 to section 30 of the 1990 Act (which is repealed by the Act) with a reference to section 54 (parental orders) of the Act.
247. Paragraph 74 amends Article 12 of the Children (Northern Ireland) Order 1995 and provides for a court which makes a residence order in favour of a second female parent of a child conceived through assisted conception to also give parental responsibility to that parent.
248. [Paragraph 75](#) amends Article 155(3) of the Children (Northern Ireland) Order 1995 to include as legitimate someone conceived through assisted conception at a time when their mother was in a civil partnership, or who was born at a time when their mother was in a civil partnership, or whose mother and second female parent were civil partners at any time between the treatment and the child's birth. The amendment takes account of civil partnerships which are void.
249. [Paragraph 77](#) amends Schedule 1 to the Children (Northern Ireland) Order 1995 so that references to a child's father can be read as including references to a child's second female parent.
250. [Paragraph 78](#) amends paragraph 1 of Schedule 6 to the Children (Northern Ireland) Order 1995, in relation to succession in cases of intestacy where parents are not married to each other, so that references to "father" include a second female parent.

Family Homes and Domestic Violence (Northern Ireland) Order 1998

251. [Article 2\(3\)](#) lists recognised "family proceedings" for the purpose of the Order. Paragraph 79 of Schedule 6 replaces the reference in Article 2(3)(f) of the Order to section 30 of the 1990 Act (which is repealed by the Act) with a reference to section 54 (parental orders) of the Act.