

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:—

Introductory Note:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“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. 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.”

Pepper v Hart Note (see General Note: Pepper v Hart):

In introducing the Second Reading in the House of Commons of the Bill for this Act on 12th May 2008 the Secretary of State for Health (Alan Johnson) said as follows:

“The purpose of the Bill is to ensure that the 1990 Act is revised to keep pace with new avenues of scientific research and to reflect wider change in our society. As with the 1990 Act, the Bill has been the subject of careful consideration and lengthy consultation involving the public, scientists, faith groups and, of course, Members from both sides of the House and from the other place. In 2004, following reports by the Science and Technology Committee and the expert group convened by the Government to consider how existing legislation could accommodate and regulate new developments in stem cell research, we announced a review of the 1990 Act. A public consultation then took place in 2005, which led to a White Paper in December 2006. The Bill was then published in draft form for scrutiny by a Joint Committee drawn from both Houses.”

Part 1

AMENDMENTS OF THE HUMAN FERTILISATION AND EMBRYOLOGY ACT 1990

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—

“ (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.”

Section 1

Introduction: The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"This section amends section 1 of the 1990 Act so as to ensure that the Act applies to all live human embryos regardless of the manner of their creation, and to all live human gametes (eggs and sperm). An embryo will continue to be defined under the new section 1(1) in broad terms as a “live human embryo” but the definition no longer assumes that an embryo can only be created by fertilisation. This brings the term “embryo” up to date with technologies that have been developed since the time of enactment of the 1990 Act.”

Pepper v Hart Note (see General Note: Pepper v Hart):

In introducing the Second Reading in the House of Commons of the Bill for this Act on 12th May 2008 the Secretary of State for Health (Alan Johnson) said as follows:

“The Bill will ensure that all human embryos created for research—regardless of how they are created—are subject to the same regulatory framework. It will retain the restrictions imposed by the 1990 Act—that the maximum permitted period of development for all research embryos is 14 days. In practice, no research embryos have been developed as far as that maximum. This is not the first development that has combined human and animal material. If scientists in the UK had not been able to fuse human and animal cells in the '60s and '70s, developments such as the human genome project would not be possible and drugs such as Herceptin would not have been created. The Government believe that it is important to bring this new and exciting scientific development within the strict legal and ethical framework that the Bill provides.”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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,” .

Section 2

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " This section inserts a new definition into section 2 of the 1990 Act to clarify that any reference to “nuclear DNA” includes DNA in both the nucleus and pronucleus of an embryo.”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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,

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.

Section 3

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 3 amends section 3 of the 1990 Act, which covers prohibitions connected with embryos. Section 3(2) prohibits the placing in any woman of any embryo other than a permitted embryo or any gametes other than permitted eggs or permitted sperm."

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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—
 - (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).”

Section 4:

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"This section inserts new section 4A into the 1990 Act to provide that certain types of embryo, which contain both human and animal DNA, are subject to regulation under the 1990 Act. These are defined as "human admixed embryos".

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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).

Section 5

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 5 introduces Schedule 1 which contains amendments to Schedule 1 to the 1990 Act. These relate to the conditions for disqualification for appointment to the chair, deputy chair and membership of the Human Fertilisation and Embryology Authority. In particular, those who have been the subject of bankruptcy orders or certain criminal convictions cannot be appointed to the Human Fertilisation and Embryology Authority."

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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).”

Section 6

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 6 amends section 8 of the 1990 Act relating to general functions of the Authority. It adds to the list of the Human Fertilisation and Embryology Authority's general functions in (i) requiring the Authority to maintain a statement of general principles and (ii) requiring the Human Fertilisation and Embryology Authority to promote compliance with the requirements imposed by the 1990 Act and with the Code of Practice under section 25 of the 1990 Act.

39. New section 8(2) gives the Authority power to charge for advice given under section 8(1)(c). It is intended that the charge would recover all or part of the costs of providing the advice.

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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.
 - (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).”
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Section 7

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“This section requires the Human Fertilisation and Embryology Authority to carry out its functions effectively, efficiently and economically and to have regard to the principles of best regulatory practice in doing so.”

“After section 8” – presumably, of the Human Fertilisation and Embryology Act 1990.

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.

(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.”

Section 8

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

" Section 8 inserts into the 1990 Act new sections 8B and 8C which give the Human Fertilisation and Embryology Authority power to make arrangements with a government department, a public authority or the holder of a public office for the carrying out of any function of the Authority. However, the Human Fertilisation and Embryology Authority will retain responsibility for carrying out its functions. This new flexibility will, for example, permit the Authority to arrange with another

public body for that body to conduct inspections on behalf of the Human Fertilisation and Embryology Authority. Similarly, the Human Fertilisation and Embryology Authority will have power to contract-out certain of its functions to a body that is not a public authority. The functions that may be contracted out do not include licensing, the right of entry and power of search and seizure; or the power to make subordinate legislation. New section 8C(1)(a) prevents the contracting out of any function which, by virtue of any enactment, may be exercised only by members of the Authority. The Secretary of State can by order prevent any function of the Human Fertilisation and Embryology Authority from being contracted out (section 8C(1)(c)).

Section 8 also inserts new section 8D which provides the necessary authority for those exercising Human Fertilisation and Embryology Authority functions under an agency arrangement or contract, to receive and disclose information, such as that contained on the Human Fertilisation and Embryology Authority register, where this is necessary or expedient for the purpose of exercising the relevant function.”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

9 Power to assist other public authorities

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

“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.”

Section 9

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“Section 9 inserts in the 1990 Act a new section 8E which allows the Human Fertilisation and Embryology Authority to provide assistance to any other public authority in the UK. The Human Fertilisation and Embryology Authority may charge a fee for these services. It is intended that the fee would recover the costs of providing the assistance. This allows the Human Fertilisation and Embryology Authority to carry out functions on behalf of another organisation.”

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 subcommittees 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.”
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Section 10

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“Section 10 inserts new section 9A into the 1990 Act. Subsection (1) of section 9A provides that the Human Fertilisation and Embryology Authority may delegate its functions to a committee or a member of the Authority, or to the Authority's staff. Subsection (2) provides that the Human Fertilisation and Embryology Authority may establish committees and sub-committees which may, in accordance with subsection (3), include people who are not members of the Authority. This provision replaces that in section 9 of the 1990 Act requiring licence committees to be comprised only of members of the Authority. These new provisions enable the Human Fertilisation and Embryology Authority to delegate any function, apart from those which can only be exercised by members, to its staff or to a committee. These functions can include licence decisions and development of the Code of Practice.”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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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Section 11

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"This section introduces Schedule 2 to the Act which amends Schedule 2 to the 1990 Act. These amendments relate to licensable activities, specifically embryo testing and amending the purposes for which research licenses can be granted including the creation, keeping and use of human admixed embryos."

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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.”

Section 12

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“Section 12 sets out general conditions that apply to every licence granted under the 1990 Act. The 2007 Regulations amended section 12 to except non-medical fertility services from the ambit of Schedule 3 to the 1990 Act. Neither the remit of the EU Directive or the powers under which it was implemented allowed for the consent provisions in Schedule 3 to the 1990 Act about the use and storage of gametes and embryos to be applied in the case of persons providing gametes for the purpose of the provision of non-medical fertility services. This section amends section 12 of the 1990 Act to rectify that situation. Section 12 also amends section 12 of the 1990 Act to ensure that no money or other benefit can be given or received for the supply of human admixed embryos (unless authorised by directions) and that if human admixed embryos are supplied to a person to whom another licence applies they must be provided with any information that the Human Fertilisation and Embryology Authority may specify in conditions. These amendments ensure that any research licence granted in connection with human admixed embryos will be subject to the same relevant licence conditions as for embryos or gametes.”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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).

Section 13

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 13 introduces Schedule 3 to the Act which amends Schedule 3 to the 1990 Act, relating to consent to store or use embryos or gametes to create an embryo *in vitro*."

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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.

(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—

(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.

Section 14

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " This section amends section 13 of the 1990 Act which relates to conditions of licences for treatment."

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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” ” .
-

Section 15

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 15 amends section 14 of the 1990 Act. Section 14, as amended, continues to provide for various conditions to apply to storage licences. Section 15 amends the statutory conditions attached to storage licences and amends the maximum statutory storage limit for embryos to bring it into line with the ten-year limit applicable to the storage of gametes. Under the 1990 Act as it had effect before the amendments made by this section, embryos could be put into storage for five years. This has been amended to remove the five-year break point and allow couples to opt for a full ten-year storage period at the outset. Section 14 is also amended to apply a ten-year statutory storage period to human admixed embryos."

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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).

Section 16

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“This section amends section 16 of the 1990 Act. It removes from section 16 of the 1990 Act the requirement for a licence application to be in a particular form and for an initial and an additional fee to be paid. Fees will be set in accordance with a scheme made by the Human Fertilisation and Embryology Authority under new section 35B of the 1990 Act set out at section 27.”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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” ” .
 - (3) Omit subsection (3) (which defines “ the nominal licensee”).
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Section 17

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 17 repeals the definition of “nominal licensee” from the 1990 Act. The term “nominal licensee” is no longer used because it does not adequately reflect the responsibilities of a licence holder.”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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—

- (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.”

Section 18

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 18 provides that the Human Fertilisation and Embryology Authority may revoke or vary any licence on application by the person responsible or the licence holder (if different). The Human Fertilisation and Embryology Authority may also revoke or vary a licence of its own volition where certain conditions are satisfied. The power to vary a licence does not include the power to vary the mandatory conditions that are, by virtue of sections 12 to 15 of the 1990 Act, included in every licence.”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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.

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

Section 19

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 19 makes a number of small amendments to the procedures in the 1990 Act for notifying licensing decisions to interested parties. The Human Fertilisation and Embryology

Authority will provide the applicant with notice of its proposed decision and the reasons for the decision. Once a person has been given notice they will then have the right to make representations about the proposed decision. If the Human Fertilisation and Embryology Authority proceeds with the decision, then section 20 (inserted by section 21 of the Act) provides that the applicant may apply for reconsideration of the decision.”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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.”

Section 20

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“This section inserts new section 19C which replaces the previous section 22 of the 1990 Act and relates to the Authority’s powers to suspend a licence. Any period of suspension is restricted to a maximum of 3 months although this may be renewed. Appeals against a decision to suspend may be made to an appeals committee constituted under regulations made by the Secretary of State in the same way as appeals against other licensing decisions (see new section 20A of the 1990 Act).”

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.

(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—
 - (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.”

Section 21

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 21 substitutes sections 20 and 21, and inserts new section 20A and 20B into, the 1990 Act. Substituted section 20 sets out the rights of appeal against licensing decisions of the Human fertilisation and Embryology Authority. New section 20A provides that the Human Fertilisation and Embryology Authority must maintain one or more appeals committees. The constitution of appeals committees will be set out in regulations made by the Secretary of State, that are subject to the affirmative procedure. The regulations may also provide for the appeals committee to appoint advisors to give specialist scientific, legal and other advice.

New section 20B provides that reconsideration of licensing decisions and suspension notices will be by way of a fresh decision. It provides for regulations to make provision about the procedure to be followed. Those regulations may in particular make provision about the right of the appellant and the Human Fertilisation and Embryology Authority to appear before the committee; the consideration of written representations by the committee; the giving and admissibility of evidence and the production of documents; the taking of decisions by the committee and the notification of those decisions. New section 21 provides that a further appeal may be made to the High Court (or, in Scotland, the Court of Session) by a person aggrieved by the appeals committee's decision, but only on a point of law.”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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.”

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

Section 22

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 24 of the 1990 Act provides for directions to be given in respect of various matters. Section 22 makes several amendments to this section, some of which concern the directions which may be given in respect of human admixed embryos and others which make updated provision concerning what is to happen when a licence is varied or ceases to have effect."

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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” ” .

Section 23

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“Section 25 of the 1990 Act requires the Human Fertilisation and Embryology Authority to maintain a Code of Practice giving guidance about the conduct of licensable activities. In particular the Code must provide guidance to clinics about the account to be taken of the welfare of children who may be born as a result of treatment services (including a child’s need for a father) and of other children who may be affected by such births. Section 23(2) amends section 25(2) of the 1990 Act to replace the reference to “a child’s need for a father” with a reference to “a child’s need for supportive parenting”. Section 23 also inserts new section 25(2A) into the 1990 Act to require the Human Fertilisation and Embryology Authority to provide guidance in the Code of Practice about the giving of a suitable opportunity to receive proper counselling and the provision of such relevant information as is proper, as required by the licence conditions for clinics under new section 13(6) and (6A) of the 1990 Act.”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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.

(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 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 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.

(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 donorconceived 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.

(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,

(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.”

Section 24

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“Section 31 makes provision for people conceived as a result of donated gametes since the 1990 Act came into effect to require the Human Fertilisation and Embryology Authority to provide them with certain information. Donor-conceived people are able to find out whether, but for the provisions of the Act which determine parenthood in relation to people born as a result of certain treatment services (sections 27 to 29 of the Act), they would be

related to the person they intend to marry and at age 18 they are able to find out whether the register shows that they were, or may have been, conceived using donor gametes. If so, they are able to obtain such information which is held on the register as is specified in regulations made under section 31(4).”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

25 Restrictions on disclosure of information

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

“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

(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.
- (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 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,
 - (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).”

Section 25

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“This section inserts into the 1990 Act new section 33A which will replace the current section 33. New section 33A retains the prohibition on the disclosure of the information falling within section 31(2) of the 1990 Act. Section 33 of the 1990 Act distinguishes between information which can be disclosed by the Human Fertilisation and Embryology Authority and information which can be disclosed by licence holders and persons to whom directions have been given.

New section 33A places all persons who might hold information which is on the Human Fertilisation and Embryology Authority's register on a similar footing when it comes to lifting the prohibitions on disclosure. Information which has been obtained by any person as a member or an employee of the Human Fertilisation and Embryology Authority, a person to whom a licence applies, including those covered by third party agreements, those to whom directions from the Human Fertilisation and Embryology Authority have been given, and authorised people who are carrying out functions which have been contracted out to them by the Human Fertilisation and Embryology Authority (and their members of staff or employees), may not be disclosed except to the categories of person or in the circumstances specified in new section 33A(2).”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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).”

Section 26

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

" Section 3 of the Act inserts new section 3ZA(5) into the 1990 Act to provide a regulation-making power to enable eggs and/or embryos with altered mitochondrial DNA to be classified as “permitted” eggs or embryos, and thus to be implanted in a woman (see note on section 3 above). The provisions of the 1990 Act assume that only one woman’s egg has been used to produce a child. New section 35A (inserted by section 26) provides a further regulation making power to amend specified sections of the 1990 Act if the power under new section 3ZA(5) is exercised. This enables provision to be made about cases where permitted embryos and/or eggs have been created using material from more than one woman. The relevant provisions are set out in section 35A(2).”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

27 Fees

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

“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.”

Section 27

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“This section inserts in the 1990 Act a new section 35B setting out the circumstances where the Human Fertilisation and Embryology Authority may charge a fee under the 1990 Act. Fees are to be determined by the Human Fertilisation and Embryology Authority under a scheme determined by the Authority, subject to the approval of the Secretary of State and the Treasury. Different fees may be fixed for different circumstances and, in fixing the fee, the Human Fertilisation and Embryology Authority may have regard to the costs incurred in exercising its functions under the 1990 Act. The inserted section 35B also provides a new power for the Human Fertilisation and Embryology Authority to charge fees to recoup the cost of meeting various statutory requests for information from donor-conceived people. In these cases, it is intended that the amount of the fee should only reflect the cost of dealing with applications under the provision concerned.”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

28 Inspection, entry, search and seizure

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

“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.

Section 28

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"This section introduces Schedule 5 to the Act which inserts new Schedule 3B into the 1990 Act. New Schedule 3B replaces the existing sections 39 and 40, which relate to the power to enter, inspect and search premises and to seize items found on premises. Schedule 3B also deals with the obtaining and execution of warrants where an offence is suspected. It also provides that failure to comply with certain requirements under the Schedule, or obstruction of the exercise of any rights under it, is an offence. Section 28 also provides that it is not unlawful for a member or employee of the Human Fertilisation and Embryology Authority to be in possession of embryos, gametes or human admixed embryos in the course of their employment."

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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—
 - (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).

Section 29

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“Section 29 relates to offences and penalties described in the 1990 Act, as extended by the Act. It amends section 41 of the 1990 to take account of the prohibitions introduced by the Act including those relating to the creation or use of human admixed embryos without a licence; and sets out the circumstances where a defence can be raised under the 1990 Act. The requirement for consent of the Director of Public Prosecutions remains unchanged.”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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);

(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” ” .

Section 30

Introduction:

This section amends section 45 of the Human Fertilisation and Embryology Act 1990 (regulations) by extending the powers of the Secretary of State to make regulations under the Act. This section also inserts an amended sub-section (4) which requires affirmative resolution for certain instruments: see General Note: Statutory Instruments: Draft Affirmative Resolution.

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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—

(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.”

Section 31

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"New sections 1(6) and 4A(11) of the 1990 Act confer powers to amend the definitions of "embryo", "gametes" and "human admixed embryo" in the 1990 Act by regulations. Section 31 inserts new section 45A into the 1990 Act to enable consequential changes to other legislation as a result of amending any of these definitions. The power enables amendments to be made to Acts of Parliament, Acts of the Scottish Parliament, Measures or Acts of the Welsh Assembly and Northern Ireland legislation and any secondary legislation made under them (after consultation with the devolved administrations where appropriate). The power under section 45A is exercisable by order."

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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.
 - (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.”
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Section 32

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“Section 32 inserts new section 45B into the 1990 Act. This states that the power to make an order under new section 45A and section 8C(1)(c) (see section 8) of the 1990 Act is exercisable by statutory instrument. The negative resolution procedure applies to section 8C(1)(c) but the affirmative procedure is applicable to new section 45A.”

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

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.

Section 33

Introduction:

This section introduces Part 2, which deals with the issue of parenthood in cases involving assisted reproduction. The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 33 re-enacts section 27 of the 1990 Act. It will remain the case that the woman who carries a child following assisted reproduction (anywhere in the world) is the child's mother, unless the child is subsequently adopted or parenthood is transferred through a parental order."

Subsection (1):

"Is to be treated" – presumably, for all legal purposes except those for which an alternative definition is expressly provided (whether by statute or contract).

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.

Section 34

Introduction:

This section introduces the provisions of sections 35 to 47 which determine who is to be treated as the other parent of a child born as a result of artificial insemination or an embryo or gametes being placed into a woman who remains the mother of the child.

Subsection (1):

Mother – see section 33

“Is to be treated” – presumably, for all legal purposes except those for which an alternative definition is expressly provided (whether by statute or contract).

35 Woman married at time of treatment

(1) If—

(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).

Section 35

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"There is no change to the existing position in relation to a child conceived as a result of treatment with donor sperm by a married woman. Her husband will be treated as the child's father, unless it is shown that he did not consent to his wife's treatment. This provision (and others which operate to determine legal parenthood) is subject to the common law presumption that a child is the legitimate child of a married couple ..."

Subsection (1):

Party to the marriage – see s.49.

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.

Section 36

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"The existing provisions of the 1990 Act which enable an unmarried man to be the father of a donor-conceived child if he is "treated together" with the mother in a licensed clinic are replaced by sections 36 and 37. The new provisions require the couple to be treated in a UK licensed clinic, as before, to ensure there is clear evidence of the parents' intentions about fatherhood. However, for the man to be the father at the time the embryo or gametes have been placed in the woman or at the time she is artificially inseminated, the couple must each have given notice of consent to him being treated as the father.

Neither of them must have given notice withdrawing that consent and the woman to be treated must not have given notice of consent to another man or woman being treated as the child's parent. The notices of consent do not necessarily have to be drawn up in the clinic, but they must be provided to the "person responsible" at the clinic. This is the person under whose supervision licensed activities are carried out. If, for example, a woman were to give notice of consent to several people being the father of a child, and corresponding notices were given by the other persons, the latest set provided to the clinic would apply."

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.

(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.

Section 37

Introduction:

This section defines the agreed fatherhood conditions for a child born as a result of assisted conception. Both the mother and the person wishing to be treated as the father must have given the person responsible notice that they consent to the person being treated as the father and that consent must not have been withdrawn nor must the mother have given notice that she wishes another man or woman to be treated as the other parent. The agreed fatherhood conditions cannot apply if the man and woman are within prohibited degrees of relationship to one another.

Subsection (2):

See General Note: Writing.

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.

Section 38

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 38(1) provides that where a person is treated as a child's father under the preceding sections, no other person is to be treated as the father. A sperm donor, for example, would not have this status. Sections 38(2) and (3) provide that sections 35 and 36 do not affect the common law presumption that a child is the legitimate child of the parties to a marriage. If, for example, a woman marries between the conception of the donor-conceived child and its birth, it will be presumed that her new husband is the father of the child, even if the agreed fatherhood conditions were satisfied in relation to a different man at the time when the gametes or embryo were transferred. This presumption may, however, be rebutted by evidence (for example a DNA test) showing that the husband is not in fact the child's father. In that case, the provisions of section 36 would apply and the man in respect of whom the agreed fatherhood conditions were satisfied would be the child's father. There is no parallel presumption in common law for people who enter a civil partnership. So the provisions which would otherwise apply to determine parenthood will not be affected by the mother entering into a civil partnership after the transfer of an embryo or gametes."

Subsection (1):

Person – here, an individual (there being an obvious contrary indication to the normal rule in the Interpretation Act 1978 – see General Note: Person).

Subsection (2):

See General Note: England and Wales.

See General Note: Northern Ireland.

See General Note: Common Law.

Party to a marriage – see s.49.

Subsection (3): See General Note: Scotland.

Enactment – see s.58; see also General Note: Enactment.

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

(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.

Section 39

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 39 replaces provisions inserted into the 1990 Act by the Human Fertilisation and Embryology (Deceased Fathers) Act 2003. Section 39 applies where a man's sperm, or an embryo created with his sperm, is used after his death. The man may be treated as the child's father, for the purposes of birth registration only, if various conditions are met. The man must have consented, in writing, to the use of the sperm or embryo after his death and to being treated as the child's father for the purposes of birth registration. The woman must elect that he should be treated in this way within 42 days (or, in Scotland, 21 days) of the child's birth. This provision applies whether the embryo or gametes were transferred to the woman in the UK or elsewhere."

Subsection (1):

For late elections with consent, see s.52.

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,
- (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.

Section 40

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 40 makes similar provision to section 39 for the case where donated sperm has been used. If the woman was married at the time of creation of an embryo using donor sperm and her husband dies before transfer of the embryo to her, she may elect that he should be treated as the child's father for the purposes of birth registration, subject to the consents described above. If the woman and man were not married at the time of creation of the embryo, there are additional requirements in that the agreed fatherhood conditions must have been met immediately before the man's death and the embryo must have been created in the course of licensed treatment services in the UK."

Subsection (1):

Party to a marriage – see s.49.

For late elections with consent, see s.52.

Subsection (2):

For late elections with consent, see s.52.

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.

Section 41

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"This section prevents a man from being treated as a child's father in certain cases even though the man's sperm was used. Subsection (1) prevents a man who has donated his sperm for the treatment of others from being treated as the father. This applies even where there is no father by virtue of section 35 or 36. Subsection (2) provides that where a man's sperm, or an embryo created with his sperm, is used after his death, he is not in general to be treated as the father or any resulting child. Section 39 (which as explained above applies only for the purposes of birth registration) provides a limited exception to this rule."

The 1990 Act – the Human Fertilisation and Embryology Act 1990 – see s.63.

The remainder of this Act has not been reproduced for the purposes of this sample.