Draft Order laid before Parliament under section 62(3) of the Human Fertilisation and Embryology Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. 00

HUMAN FERTILISATION AND EMBRYOLOGY

The Human Fertilisation and Embryology (Consequential Amendments and Transitional and Saving Provisions) Order 2009

Made - - - -	*2009*
Coming into force	
for the purposes of article 2 and Schedules 1 and 2	*1st September 2009*
for all other purposes	*1st October 2009*

The Secretary of State in exercise of the powers conferred by sections 61 and 64 of the Human Fertilisation and Embryology Act 2008(**a**) makes the following Order:

Citation, coming into force, extent and interpretation

1.—(1) This Order may be cited as the Human Fertilisation and Embryology (Consequential Amendments and Transitional and Saving Provisions) Order 2009 and shall come into force—

(a) for the purposes of article 2 and Schedules 1 and 2, on 1st September 2009; and

(b) for all other purposes, on 1st October 2009.

(2) Subject to paragraph (3), this Order extends to England, Wales, Scotland and Northern Ireland.

(3) Any amendment made by this Order shall have the same extent as the enactment to which it relates.

(4) In this Order,

"the 2008 Act" means the Human Fertilisation and Embryology Act 2008;

"the 1990 Act" means the Human Fertilisation and Embryology Act 1990(**b**); and

"the Authority" means the Human Fertilisation and Embryology Authority.

Consequential amendments relating to parenthood provisions

2. Schedules 1 and 2 (which make consequential amendments relating to parenthood) shall have effect.

(**a**) 2008 c. 22.
(**b**) 1990 c. 37.

Other consequential amendments

3. Schedule 3 (which makes consequential amendments other than in relation to parenthood) shall have effect.

Transitional and saving provisions

4. Schedule 4 (which makes transitional and saving provisions) shall have effect.

Signed by authority of the Secretary of State for Health

Name
Minister of State
Date Department of Health

SCHEDULE 1

Article 2

Consequential Amendments Relating to Parenthood

PART 1

Amendments to Primary legislation

Marriage (Scotland) Act 1977

1. In section 2 of the Marriage (Scotland) Act 1977(**a**) (marriage of related persons), after subsection (7) insert—

> "(7A) This section and Schedule 1 to this Act have effect as if any reference in paragraphs 1 and 2 of that Schedule to a mother within any of the degrees of relationship specified in either column included a woman who is a parent of a child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008 (c. 22).".

Children Act 1989

2. In section 104 of the Children Act 1989(**b**) (regulations and orders), in subsection (3A), after "4(1B)" insert ", 4ZA(3)".

Human Fertilisation and Embryology Act 1990

3. In section 30 of the 1990 Act (parental orders in favour of gamete donors), as it has effect until the coming into force of its repeal by the 2008 Act, for subsection (5) substitute—

> "(5) The court must be satisfied that both—
>
> (a) the father of the child (including a person who is the father by virtue of section 28 of this Act or section 35 or 36 of the Human Fertilisation and Embryology Act

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(**a**) 1977 c. 15. Section 2 was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), sections 9 and 10, Schedule 1, paragraph 17 and Schedule 2; the Marriage (Prohibited Degrees of Relationship) Act 1986 (c. 16), section 2, Schedule 2, paragraph 2; the Gender Recognition Act 2004 (c. 7), Schedule 4, paragraph 7; the Family Law (Scotland) Act 2006 (asp 2), section 1(a) and S.S.I. 2006/384, article 4.

(**b**) 1989 c. 41. Section 104(3A) was inserted by the Children and Young Persons Act 2008 (c. 23), section 39 and Schedule 3 paragraphs 1, 25(1) and (4). Section 4ZA(3) was inserted by the Human Fertilisation and Embryology Act 2008 Act (c. 22), section 56, Schedule 6, Part 1, paragraph 27.

2008), where he is not the husband, or any woman who is a parent of the child by virtue of section 42 or 43 of that Act, and

(b) the woman who carried the child,

have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.".

Civil Partnership Act 2004

4. In section 86 of the Civil Partnership Act 2004(**a**) (eligibility), after subsection (5) insert—

"(5A) This section and Schedule 10 have effect as if any reference in that Schedule to a mother within any of the degrees of relationship specified in either column included a woman who is a parent of a child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008 (c. 22).".

PART 2

Amendments to Secondary legislation

Civil Aviation (Births Deaths and Missing Persons) Regulations 1948

5.—(1) The Civil Aviation (Births Deaths and Missing Persons) Regulations 1948(**b**) are amended as follows.

(2) In regulation 2 (interpretation) after the definition of "Person in command" insert—

""second female parent" means the woman who is a parent of the child by virtue of—

(a) section 42 of the Human Fertilisation and Embryology Act 2008(**c**) (which relates to treatment provided to a woman who is at the time of treatment a party to a civil partnership or, in certain circumstances a void civil partnership); or

(b) section 43 of that Act (which relates to treatment provided to a woman who agrees that second woman to be parent) where the woman—

(i) is the civil partner of the child's mother at the time of the child's birth, or

(ii) was the civil partner of the child's mother at any time during the period beginning with the time mentioned in section 43(b) of that Act and ending with the child's birth;".

(3) For regulation 8 (saving for father of illegitimate child) substitute—

"**Saving in relation to an illegitimate child**

8.—(1) In the case of the birth of an illegitimate child, the name of any person as father of that child shall not be entered in any return or record of particulars of the birth of that child unless the mother of the child and the father shall have signed a completed form of return as informants.

(2) In the case of the birth of an illegitimate child, the name of any woman (other than the mother) as a parent of that child shall not be entered in any return or record of particulars of the birth of that child unless the mother of the child and that woman shall have signed a completed form of return as informants.

(**a**) 2004 c. 33. Section 86 was amended by the Family Law (Scotland) Act 2006 (asp 2), Schedule 1, paragraph 2 and Schedule 3.

(**b**) S.I. 1948/1411, relevant amending instrument is S.I. 1972/323.

(**c**) 2008 c. 22.

(3) Paragraph (2) only applies to a woman who is a parent of a child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and who does not fall within the definition of second female parent.".

(4) Appendix A shall be amended as follows—

(a) for "father" in entries 6 and 9 substitute "father or woman who is a parent of the child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008";

(b) for entry 8 substitute—

"8. Date and place of marriage or civil partnership of parents";

(c) for note (e) substitute—

"(e) Christian names in full and followed by surname; surname to be written in block letters. If the child is illegitimate (see (8) above) the particulars of the father or woman who is a parent of the child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 shall not be recorded in the return unless at the joint request of the mother and the father or other parent of the child, in which case, that person and the mother, shall sign a completed form of return as informant."; and

(d) at the end for "(usually the mother or father)" substitute "(mother or father or second female parent)".

(5) In Appendix B, in note (g) for "father" (in both places where it appears) substitute "father or woman who is a parent by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008".

(6) In Appendix C in columns 5 and 7, after "father" insert "or woman who is a parent by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008".

Hovercraft (Births Deaths and Missing Persons) Regulations 1972

6.—(1) The Hovercraft (Births Deaths and Missing Persons) Regulations 1972(**a**) are amended as follows.

(2) In paragraph (1) of regulation 2 (interpretation) after the definition of "Person in command" insert—

""second female parent" means the woman who is a parent of the child by virtue of—

(a) section 42 of the Human Fertilisation and Embryology Act 2008(**b**) (which relates to treatment provided to a woman who is at the time of treatment a party to a civil partnership or, in certain circumstances a void civil partnership); or

(b) section 43 of that Act (which relates to treatment provided to a woman who agrees that second woman to be parent) where the woman—

(i) is the civil partner of the child's mother at the time of the child's birth, or

(ii) was the civil partner of the child's mother at any time during the period beginning with the time mentioned in section 43(b) of that Act and ending with the child's birth.".

(3) In paragraph (a) of regulation 6 (rules for ascertaining appropriate Registrar-General) after "father" insert "or second female parent".

(4) For regulation 7 (saving for father of illegitimate child) substitute—

(**a**) S.I. 1972/1513.
(**b**) 2008 c. 22.

"Saving in relation to an illegitimate child

7.—(1) In the case of the birth of an illegitimate child, the name of any person as father of that child shall not be entered in any return or record of particulars of the birth of that child unless the mother of the child and the father shall have signed a completed form of return as informants.

(2) In the case of the birth of an illegitimate child, the name of any woman (other than the mother) as a parent of that child shall not be entered in any return or record of particulars of the birth of that child unless the mother of the child and that woman shall have signed a completed form of return as informants.

(3) Paragraph (2) only applies to a woman who is a parent of a child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and who does not fall within the definition of second female parent.".

(5) Appendix A shall be amended as follows—

(a) for "father" in entries 7 and 10 substitute "father or woman who is a parent by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008";

(b) for entry 9 substitute—

"**9. Date and place of marriage or civil partnership of parents .. ..**";

(c) for note (e) substitute—

"(e) Christian names in full and followed by surname; surname to be written in block letters. If the child is illegitimate (see (9) above) the particulars of the father or woman who is a parent of the child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 shall not be recorded in the return unless at the joint request of the mother and the father or other parent of the child, in which case, that person and the mother, shall sign a completed form of return as informant."; and

(d) at the end for "(usually the mother or father)" substitute "(mother or father or second female parent)".

(6) In Appendix B, in note (g) for "father" (in both places where it appears) substitute "father or woman who is a parent by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008".

(7) In Appendix C in columns 6 and 8, after "father" insert "or woman who is a parent by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008".

Registration (Births, Still-Births and Deaths) Regulations (Northern Ireland) 1973

7.—(1) The Registration (Birth, Still-Births and Deaths) Regulations (Northern Ireland) 1973(**a**) are amended as follows.

(2) In paragraph (1) of regulation 2 (interpretation) after the definition of "occupation" insert—

""second female parent" means a woman who is a parent of a child by virtue of section 42 or 43 or, where appropriate, section 46(1) or (2) of the Human Fertilisation and Embryology Act 2008(**b**);".

(3) In regulation 11 (particulars to be registered)—

(a) for paragraph (6), substitute—

"(6) If the father or second female parent has acquired a surname different from that borne at the date of the birth, the name and surname as at the date of birth shall be entered, followed by the surname subsequently acquired.";

(**a**) S.R. 1973 No. 373 as amended by the Registration (Births, Still Births and Deaths) (Amendment) Regulations (N.I.) S.R 1996 No. 500.

(**b**) 2008 (c. 22).

(b) for paragraph (7) substitute—

"(7) If the father or second female parent is deceased, the word "deceased" shall be entered following the surname."; and

(c) for paragraph (8) substitute—

"(8) If the parents of the child were not married to each other or in a civil partnership with each other at the time of the birth, details of the father's or second female parent's occupation shall not be entered unless the name has been entered as the father or second female parent in accordance with Articles 14(3), 14ZA or 14A of the 1976 Order.".

(4) In regulation 16 (registration of birth requiring declaration and statutory declaration under section 23(2)(b) of the Act)—

(a) for paragraphs (1), (1A), and (1B) substitute—

"(1) The form of a declaration made by the mother of the child for the purposes of Article 14(3)(b)(i) or 14ZA(3)(b)(i) of the 1976 Order shall be form 4.

(1A) The form of a declaration made by the father or second female parent of the child for the purposes of Article 14(3)(c)(i) or 14ZA(3)(c)(i) of the 1976 Order shall be form 4A.

(1B) The form of a declaration made by the mother or the father or the second female parent of the child for the purposes of paragraph (3)(d)(ii), (3)(e)(ii), (3)(f)(ii) and (3)(g)(ii) of Article 14 or (3)(d)(ii), (3)(e)(ii) and (3)(f)(ii) of Article 14ZA of the 1976 Order shall be form 4B.";

(b) in paragraph (2), for "A statutory declaration for the purpose of section 23(2)(b)(ii) of the Act shall be made before" substitute "A statutory declaration for the purpose of article 14(3) of the Order shall be made before"; and

(c) accordingly for the heading to regulation 16 substitute "Registration of birth requiring declaration and statutory declaration under article 14(3)(b) of the Order".

(5) In regulation 26 (particulars to be registered) for paragraph (4) substitute—

"(4) With respect to space 8 (Occupation)—

(a) if the deceased was a child under the age of 16, the words "son of" or "daughter of" shall be entered followed by the name, surname and occupation of the father or second female parent or, if such information is not given, by the name, surname and occupation of the mother; and

(b) if the deceased was a married woman, a civil partner or widow, her occupation, if any, shall be entered followed by the words "wife of", "partner of" or "widow of" and the name, surname and occupation of her husband, partner, deceased husband or deceased partner.".

(6) In regulation 40 (application for short birth certificate), for paragraph (a)(iii) substitute—

"(iii) the name and surname of the father or second female parent; and".

(7) In the Schedule—

(a) in Form 1 (particulars for registration of a birth)—

(i) at row 7 column 1 for "Father" substitute "Father/Second Female Parent", and

(ii) at row 13 column 2 for "Surname at marriage" substitute "Surname at marriage or civil partnership";

(b) in Form 2 (particulars for registration of a still-birth)—

(i) at row 6 column 1 for "Father" substitute "Father/Second Female Parent", and

(ii) at row 12 column 2 for "Surname at marriage" substitute "Surname at marriage or civil partnership";

(c) in Form 3 (particulars for registration of a death)—

(i) for the heading substitute "Births and Deaths Registration (Northern Ireland) Order 1976 Article 21(1)", and

(ii) at line 9 for "Maiden surname (of woman who had married)" substitute "Maiden surname (of woman who had married or had a civil partnership)";

(d) in Form 4 (declaration by mother of a child for the registration/re-registration of a birth)—

(i) in the heading, after "**Article 14(3)(b)(i)**" add "or **14ZA(3)(b)(i)**",

(ii) for "For use where the child's parents are not married to each other and the mother produces a statutory declaration of paternity made by the father", substitute—

"For use where the child's parents are not married to each other or in a civil partnership with each other and the mother produces a statutory declaration of parentage made by the father or second female parent",

(iii) for "is the father of *MALE/FEMALE child named ….", substitute "is the father/second female parent of *MALE/FEMALE child named ….", and

(iv) for "and I request that his name be recorded as such in the entry of birth of the said child", substitute "and I request that the father's/second female parent's name be recorded as such in the entry of birth of the said child.";

(e) in Form 4A (declaration by father of a child for the registration/re-registration of a birth)—

(i) for the heading, substitute "**Declaration by father or second female parent of a child for the Registration/Re-registration of a Birth Births and Deaths Registration (Northern Ireland) Order 1976 Article 14(3)(c)(i)**" add "**or 14ZA(3)(c)(i)**",

(ii) for "For use where the child's parents are not married to each other and the father produces a statutory declaration of paternity made by the mother", substitute—

"For use where the child's parents are not married to each other or in a civil partnership with each other and the father or second female parent produces a statutory declaration of parentage made by the mother", and

(iii) for "do hereby solemnly and sincerely declare that I am the father of the *MALE/FEMALE child named ", substitute—

"do hereby solemnly and sincerely declare that I am the father/second female parent of the *MALE/FEMALE child named ";

(f) in Form 4B (declaration by parent on request for the registration/re-registration of a birth)—

(i) in the heading after "Births and Deaths Registration (Northern Ireland) Order 1976 Article 14(3)(d)-(g)" insert "or 14ZA(3)(d)-(f)".

(ii) in the sub-heading after "Article 14(3)" insert "or 14ZA(3)", and

(iii) in the third entry for "am the mother/father of (child's full name and surname)", substitute "am the mother/father/second female parent of (child's full name and surname)";

(g) in Form 6 (coroner's certificate after inquest (still-birth))—

(i) in the table of the particulars required to be registered concerning the still-birth—

(aa) at row 6, column 1, for "Father" substitute "Father/Second Female Parent", and

(bb) at row 12, column 2, for "Surname at marriage" substitute "Surname at marriage or civil partnership", and

(ii) after "**CONFIDENTIAL**", for "*In all cases*" to the end, substitute—

"*In all cases:* - Mother's date and place of birth:

Where parents are married to each other or in a civil partnership:-

Father's or second female parent's date and place of birth:

Date and place of marriage or civil partnership:

Has the mother been married more than once or had a civil partnership more than once?

How many children has the mother previously had by her present husband or civil partner and by any former husband or civil partner?

(excluding births or births now being registered):

Live born Still-born

If multiple birth – state number of live births and still – births at this confinement

(including this still – birth)

Live born Still – born ";

(h) in Form 17 (application for recording of change of name or surname (child aged over 2 years and under 18 years))—

(i) for the heading, substitute "**Birth and Deaths Registration (Northern Ireland) Order 1976, Article 37(3)**", and

(ii) for "**5.** Father's name and surname ….", substitute "**5.** Father's/Second Female Parent's name and surname …."; and

(i) in Form 18 (application for recording of change of name or surname (person aged 18 years or over))—

(i) for the heading, substitute "**Birth and Deaths Registration (Northern Ireland) Order 1976, Article 37(4)**", and

(ii) for "**5.** Father's name and surname ", substitute "**5.** Father's/Second Female Parent's name and surname ".

(8) In Schedule 2—

(a) for the heading "**Births and Deaths Registration Act (Northern Ireland) 1967, Section 16(4)(b)(ii)**", substitute—

"**Birth and Deaths Registration (Northern Ireland) Order 1976, Article 10(4)(b)(ii)**"**;** and

(b) For "*In all cases*" to the end, substitute—

"*In all cases*:—

Mother's date and

Place of birth

Where parents are

married to each other or in a civil partnership :-

Father's or second female parent's date and

place of birth

Date and place

of marriage or civil partnership

Has the mother been married

more than once or had a civil partnership more than once?

How many children has the mother

previously had by her present

husband or civil partner and by any former husband or civil partner?

(excluding birth or births now being

registered Live-born

Still-born ".

Merchant Shipping (Returns of Births and Deaths) Regulations 1979

8.—(1) The Merchant Shipping (Returns of Births and Deaths) Regulations 1979(**a**) are amended as follows.

(2) In sub-paragraph (i) of paragraph (a) of regulation 11 (rules for ascertaining appropriate Registrar-General), after "father" insert "or second female parent".

(3) The existing paragraph of regulation 11 shall be re-numbered (1) and there shall be inserted after that paragraph a new paragraph (2)—

"(2) In paragraph (1), "second female parent" means the woman who is a parent of the child by virtue of—

(a) section 42 of the Human Fertilisation and Embryology Act 2008(**b**) (which relates to treatment provided to a woman who is at the time of treatment a party to a civil partnership or, in certain circumstances a void civil partnership); or

(b) section 43 of that Act (which relates to treatment provided to a woman who agrees that second woman to be parent) where the woman—

(i) is the civil partner of the child's mother at the time of the child's birth, or

(ii) was the civil partner of the child's mother at any time during the period beginning with the time mentioned in section 43(b) of that Act and ending with the child's birth.".

(4) In paragraph 3 of Schedule 1 (particulars required to be contained in returns etc)—

(a) after *"Father"* insert *"or woman who is a parent of a child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008*"; and

(b) for the words "but, if the child is illegitimate" to the end substitute—

"but, if the child is illegitimate, no particulars of the father or woman who is a parent of the child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 shall be given except at the joint request of the mother and the person acknowledging himself as the father or herself as the parent, given to the informant in writing and signed by both the mother and that person.".

Registration of Overseas Births and Deaths Regulations 1982

9.—(1) The Registration of Overseas Births and Deaths Regulations 1982(**c**) are amended as follows.

(2) In paragraph (3) of regulation 5 (births which may be registered), for "the person has been legitimated by the subsequent marriage of his parents" substitute "the person has been legitimated by the subsequent marriage or civil partnership of his or her parents".

(3) In paragraph (2) of regulation 7 (entries of births) for "Concerning the father" substitute "Concerning the father or woman who is a parent of a child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008(**d**)".

British Protectorates, Protected States and Protected Persons Order 1982

10.—(1) The British Protectorates, Protected States and Protected Persons Order 1982(**e**) is amended as follows.

(2) For article 3 (legitimated children) substitute—

(**a**) S.I. 1979/1577.
(**b**) 2008 c. 22.
(**c**) S.I. 1982/1123 as amended by the British Overseas Territories Act 2002 (c. 8) and S.I. 1982/1647 and 1997/1466.
(**d**) 2008 c. 22.
(**e**) S.I. 1982/1070 as amended by the British Overseas Territories Act 2002 (c. 8).

"**Legitimated children**

3.—(1) A person legitimated by the subsequent marriage or civil partnership of his parents shall, as from the date of the marriage or civil partnership, be treated, for the purpose of determining whether he is a British protected person under this Order, as if he had been born legitimate.

(2) A person shall be deemed for the purposes of this Article to have been legitimated by the subsequent marriage or civil partnership of his parents if, by the law of the place in which the father or second female parent was domiciled at the time of the marriage or civil partnership, the marriage or civil partnership operated immediately or subsequently to legitimise them, and not otherwise.

(3) In paragraph (2) "second female parent" means the woman who is a parent of the child by virtue of—

(a) section 42 of the Human Fertilisation and Embryology Act 2008(**a**) (which relates to treatment provided to a woman who is at the time of treatment a party to a civil partnership or, in certain circumstances a void civil partnership); or

(b) section 43 of that Act (which relates to treatment provided to a woman who agrees that second woman to be parent) where the woman—

(i) is the civil partner of the child's mother at the time of the child's birth, or

(ii) was the civil partner of the child's mother at any time during the period beginning with the time mentioned in section 43(b) of that Act and ending with the child's birth.".

(3) In article 4 (posthumous children) for "father or mother" in the first two places that those words occur substitute "father, mother or parent by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008.".

(4) In article 7 (provisions)—

(a) in paragraph (1), for "either his father or his mother" substitute "his father, his mother or a woman who is his parent by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008"; and

(b) in paragraph (2)(b), for "either his father or mother" substitute "his father, his mother or a woman who is his parent by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008".

Magistrates' Courts (Children and Young Persons) Rules 1992

11. In rule 14(3) of the Magistrates' Courts (Children and Young Persons) Rules 1992(**b**) (notice by person proposing to bring proceedings) for paragraph (c) substitute—

"(c) in a case where—

(i) the relevant minor has a father, and

(ii) the father and mother of the relevant minor were not married to each other at the time of the relevant minor's birth,

any person who is known to the applicant to have made an application for an order under section 4 of the Act of 1989(**c**) (acquisition of parental responsibility by father) which has not yet been determined; and

(d) in a case where—

(i) the relevant minor has a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008(**d**), and

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(**a**) 2008 c. 22.
(**b**) S.I. 1992/2071; relevant amending instruments are S.I. 2001/615 and 2005/617.
(**c**) Section 4 was amended by the Adoption and Children Act 2002 (c. 38) section 111(1) to (4) and S.I. 2003/3191, articles 3(a) and 6 and Schedule, paragraph 1.
(**d**) 2008 c. 22.

(ii) the relevant minor is not a person to whom section 1(3) of the Family Law Reform Act 1987(**a**) applies,

any person who is known to the applicant to have made an application for an order under section 4ZA of the Act of 1989(**b**) (acquisition of parental responsibility by second female parent) which has not yet been determined.".

The Children (Parental Responsibility Agreement) Regulations (Northern Ireland) 1996

12.—(1) The Children (Parental Responsibility Agreement) Regulations (Northern Ireland) 1996(**c**) shall be amended as follows.

(2) For regulation 2 (form of parental responsibility agreement), substitute—

"Form of parental responsibility agreement

2. A parental responsibility agreement under—

(a) Article 7(1)(b) of the Children (Northern Ireland) Order 1995 (acquisition of parental responsibility by unmarried father), shall be in the form set out in Part 1 of the Schedule; and

(b) Article 7(1ZA)(b) of the Children (Northern Ireland) Order 1995 (acquisition of parental responsibility by second female parent), shall be in the form set out in Part 2 of the Schedule.".

(3) In regulation 3(2) (recording of parental responsibility agreement), after "father" insert "or second female parent (as the case may be)".

(4) The Schedule shall become Part 1 of the Schedule.

(5) After Part 1 of the Schedule insert Part 2 set out in Schedule 2 to this Order.

The Adoption Agencies Regulations 2005

13. In regulation 14(4) of the Adoption Agencies Regulations 2005(**d**) (requirement to provide counselling etc) in sub-paragraph (b)(i) insert after "father)"—

", or paragraph 4ZA of the 1989 Act(**e**) (acquisition of parental responsibility by second female parent)".

The Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005

14. In regulation 2 of the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005(**f**) (interpretation), in the definition of "relative" after "marriage" add "or by virtue of sections 27 to 29 of the Human Fertilisation and Embryology Act 1990(**g**) or sections 33 to 47 of the Human Fertilisation and Embryology Act 2008(**h**)".

The Gender Recognition Register Regulations 2005

15.—(1) The Gender Recognition Register Regulations 2005(**i**) are amended as follows.

(**a**) 1987 (c. 42). Paragraph (c) section 1(3) was substituted by the Adoption and Children Act 2002, section 139(1), Schedule 3, paragraphs 50 and 51. Paragraphs (ba), (bb) were inserted into sub-section (3) by the Human Fertilisation and Embryology Act 2008, section 56, Schedule 6, Part I, paragraphs 24(1) and (2)

(**b**) Section 4ZA was inserted by the Human Fertilisation and Embryology Act 2008 (c. 22) section 56, Schedule 6, Part 1, paragraph 27.

(**c**) S.R. 1996/455.

(**d**) S.I. 2005/389; relevant amending instrument is S.I. 2005/3482.

(**e**) Section 4ZA was inserted by the Human Fertilisation and Embryology Act 2008 (c. 22) section 56, Schedule 6, Part 1, paragraph 27.

(**f**) S.I. 2005/888; there are no relevant amending instruments.

(**g**) 1990 c. 37.

(**h**) 2008 c. 22.

(**i**) S.I. 2005/912.

(2) In regulation 1(2) (citation, commencement and interpretation) after the definition of "the 2004 Act" insert—

""the 2008 Act" means the Human Fertilisation and Embryology Act 2008(**a**);".

(3) In Part 2 of Schedule 1 (additional particulars etc)—

(a) for "Father" substitute "Father (if applicable)"; and

(b) before "Mother" insert—

"Parent (being a woman who is a parent of the child by virtue of section 42 or 43 of the 2008 Act) (if applicable)

Name

Occupation

Place of birth".

(4) In Part 3 of Schedule 2 (Her Majesty's Forces Records), for "Father" substitute "Father or woman who is a parent of the child by virtue of section 42 or 43 of the 2008 Act".

(5) In Schedule 3 (Consular or High Commission records), for "Father" substitute "Father or woman who is a parent of the child by virtue of section 42 or 43 of the 2008 Act".

(6) In Schedule 6 (Air Register Book), for "Father" substitute "Father or woman who is a parent of the child by virtue of section 42 or 43 of the 2008 Act".

(7) In Part 3 of Schedule 8 (Marine Register), for "Father" substitute "Father or woman who is a parent of the child by virtue of section 42 or 43 of the 2008 Act".

(8) In Schedule 9 (Hovercraft Records), for "Father" substitute "Father or woman who is a parent of the child by virtue of section 42 or 43 of the 2008 Act".

The Adoption Agencies (Wales) Regulations 2005

16.—(1) The Adoption Agencies (Wales) Regulations 2005(**b**) are amended as follows.

(2) In paragraph (1) of regulation 2 (interpretation) after the definition of "the 1989 Act" insert—

""the 2008 Act" means the Human Fertilisation and Embryology Act 2008(**c**);".

(3) In regulation 3(7)(b) and (c) (establishment of adoption panel), for "mother, father," substitute "parent,".

(4) In regulation 14 (requirement to provide counselling etc)—

(a) for paragraph (2) substitute—

"(2) This paragraph applies where the father of the child or the woman who is a parent of the child by virtue of section 43 of the 2008 Act does not have parental responsibility for the child and that person's identity is known to the adoption agency."; and

(b) in paragraph (3)—

(i) after "father" wherever the term appears, insert "or woman who is a parent by virtue of section 43 of the 2008 Act", and

(ii) in sub-paragraph (b)(i), for "section 4" substitute "section 4 or 4ZA".

(5) In regulation 17(1)(d), (e) and (g) (requirement to prepare written report), after "father" insert "or woman who is a parent of the child by virtue of section 43 of the 2008 Act".

(6) In regulation 19(3)(c) (adoption agency decision and notification), after "father" insert "or woman who is a parent of the child by virtue of section 43 of the 2008 Act".

(**a**) 2008 c. 22.
(**b**) S.I. 2005/1313 (W 95); there are no relevant amending instruments.
(**c**) 2008 c. 22.

(7) In regulation 34(4)(b) (adoption agency's decision in relation to the proposed placement), after "father of the child," insert "or woman who is a parent of the child by virtue of section 43 of the 2008 Act,".

(8) In regulation 39(2)(b) (withdrawal of consent), after "father" insert "or woman who is a parent of the child by virtue of section 43 of the 2008 Act".

(9) In paragraphs 13(a)(i) and 14 of Part 1 of Schedule 1 (information about the child) after "father" insert "or woman who is a parent of the child by virtue of section 43 of the 2008 Act".

(10) In Part 3 of Schedule 1 (information about the child's family and others)—

(a) in the heading before paragraph 1, after "father" insert "or woman who is a parent by virtue of section 43 of the 2008 Act";

(b) for paragraph 16 substitute—

"**16.** Where the child's parents are not married or parties to a civil partnership, whether the father or woman who is a parent of the child by virtue of section 43 of the 2008 Act has parental responsibility for the child and if so, how it was acquired.";

(c) for paragraph 17 substitute—

"**17.** If the identity or whereabouts of the child's father or woman who is a parent of the child by virtue of section 42 or 43 of the 2008 Act are not known, the information about him or her that has been ascertained and from whom, and the steps that have been taken to establish parentage."; and

(d) in the heading before paragraph 24, after "father" insert "or woman who is a parent of the child by virtue of section 43 of the 2008 Act"; and

(e) in paragraph 27 after "father" insert "or woman who is a parent of the child by virtue of section 42 or 43 of the 2008 Act".

The Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005

17. In regulation 2 of the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005(**a**) (interpretation), in the definition of "birth relative" after "marriage" add "or by virtue of sections 27 to 29 of the Human Fertilisation and Embryology Act 1990(**b**) or sections 33 to 47 of the Human Fertilisation and Embryology Act 2008(**c**)".

Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) Regulations 2006

18.—(1) The Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) Regulations 2006(**d**) are amended as follows.

(2) In regulation 2 after the definition of "the 2002 Act" insert—

""the 2008 Act" means the Human Fertilisation and Embryology Act 2008(**e**)".

(3) In the Schedule (additional documents which must accompany an application for a certificate of entitlement)—

(a) In the second column of the sixth entry for paragraph (iii) substitute—

"(iii) Parents' marriage or civil partnership certificate (if claiming through father or if claiming through woman who is a parent of the applicant by virtue of section 42 or 43 of the 2008 Act (**f**))".

(b) In the second column of the seventh entry for paragraph (ii) substitute—

(**a**) S.I. 2005/2689 (W 89); there are no relevant amending instruments.
(**b**) 1990 c. 37.
(**c**) 2008 c. 22.
(**d**) S.I. 2006/3145.
(**e**) 2008 c. 22.
(**f**) 2008 c. 22.

"(ii) Parents' marriage or civil partnership certificate (if claiming through father or if claiming through woman who is a parent of the applicant by virtue of section 42 or 43 of the 2008 Act);";

(c) In the second column of the eighth entry for paragraph (ii) substitute—

"(ii) Parents' marriage or civil partnership certificate (if claiming through father or if claiming through woman who is a parent of the applicant by virtue of section 42 or 43 of the 2008 Act);";

(d) In the second column of the eleventh entry for paragraph (ii) substitute—

"(ii) Parents' marriage or civil partnership certificate (if claiming through father or if claiming through woman who is a parent of the applicant by virtue of section 42 or 43 of the 2008 Act);"; and

(e) In the second column of the twelfth entry for paragraph (i) substitute—

"(i) Parents' marriage or civil partnership certificate (if claiming through father or if claiming through woman who is a parent of the applicant by virtue of section 42 or 43 of the 2008 Act);".

The Local Authority Adoption Service (Wales) Regulations 2007

19.—(1) The Local Authority Adoption Service (Wales) Regulations 2007(**a**) are amended as follows.

(2) Regulation 7 (natural parents) is amended as follows—

(a) for paragraph (3) substitute—

"(3) This paragraph applies where the father of the child or woman who is a parent of the child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008(**b**) does not have parental responsibility for the child and that person's identity is known to the local authority."; and

(b) in paragraph (4)—

(i) after "father" insert "or woman who is a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008", and

(ii) in sub-paragraph (i), for "section 4" substitute "section 4 or 4ZA".

(3) In regulation 9(1)(d) (adoption panels), for paragraph (vii) substitute—

"(vii) an assessment of the parenting capacity of the child's parent or guardian, and if a father of a child or woman who is a parent of a child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 does not have parental responsibility for the child and that person's identity is known, the parenting capacity of that person;".

(**a**) S.I. 2007/1357 (W 128); there are no relevant amending instruments.
(**b**) 2008 c. 22.

SCHEDULE 2

Article 2 and paragraph 12(5) of Schedule 1

Part inserted into the Schedule of the Children (Parental Responsibility Agreement) Regulations (Northern Ireland) 1996

"PART 2

PARENTAL RESPONSIBILITY AGREEMENT

Article 7(1ZA)(b) and (2) of the Children (Northern Ireland) Order 1995

This is an important document and should be kept in a safe place

Date recorded in the Office of Care and Protection

IMPORTANT NOTE: READ THE NOTES ON THIS FORM BEFORE YOU MAKE THIS AGREEMENT

This is a Parental Responsibility Agreement regarding

Child's Name: _____
Boy or Girl: _____
Date of Birth: _____
Date of 18th Birthday: _____

Between:

Mother's Name: _____
Address: _____
_____

And

Other Parent's Name: _____
Address: _____
_____

Declaration by and agreement of child's parents

We declare that we are the parents of the above child and we agree that the above mentioned other parent shall have parental responsibility for the child (in addition to the mother having parental responsibility for the child).

	Signed (**Mother**) Date:	Signed (**Other Parent**) Date:
Certificate of Witness	The following evidence of identity was produced to me by the person signing above, who signed in my presence:	The following evidence of identity was produced to me by the person signing above, who signed in my presence:

Evidence of identity produced to witness

Signature of witness:	_____	_____
	[Master] [District Judge (Magistrates' Court)] [Lay Magistrate] [Clerk of Petty Sessions or authorised deputy]	[Master] [District Judge (Magistrates' Court)] [Lay Magistrate] [Clerk of Petty Sessions or authorised deputy]
Name of witness:	_____	_____
Address:	_____	_____

IMPORTANT NOTES ABOUT THE PARENTAL RESPONSIBILITY AGREEMENT:
READ THESE NOTES BEFORE YOU MAKE THE AGREEMENT
About the Parental Responsibility Agreement
The making of this Agreement will affect the legal position of the mother or other parent.

You should both obtain legal advice independently of each other from different solicitors. You may be eligible for legal aid.

Completing the Form of Parental Responsibility Agreement
Please use black ink (the Agreement will be copied). Put the name of one child only on the form – a separate form must be completed for each child if the other parent is to have parental responsibility for more than one child. Do not sign the Agreement at this stage.

When you have completed the Agreement (before signing)
Take the form to a local court office (see Yellow Pages under Courts – for Belfast refer to the Magistrates' Court address or visit the website at http://www.courtsni.gov.uk/en-GB/AboutUs/Court/Locations/) or to the Office of Care and Protection in the Royal Courts of Justice, Chichester Street, Belfast. A Master (in the High Court) or a District Judge (Magistrates' Court) or a Lay Magistrate or the Clerk of Petty Sessions (or the authorised Deputy of the Clerk of Petty Sessions) will witness your signature. He or she will require you to produce the following documents before witnessing your signature on the Agreement.

To the Mother: You will need to prove that you are the child's mother, so you must produce the child's full birth certificate (not the short birth certificate). And you will also need evidence of identity showing a photograph or signature (for example a full or provisional Northern Ireland driving licence, official pass or passport).

To the Other Parent: You will also need evidence of identity showing a photograph and signature.

When the Agreement has been signed and witnessed
Make two copies of the Agreement (you do not need to copy these notes). Take or send the original of the signed and witnessed Agreement and the two copies to the Office of Care and Protection, Royal Courts of Justice, Chichester Street, Belfast BT1 3JF.

The Office of Care and Protection will record the Agreement and keep the original. A copy will be sent to each parent at the address which that parent has given on the Agreement. A Parental Responsibility Agreement will not take effect until it has been recorded in the Office of Care and Protection. That date will appear on the copy sent to each parent.

The Office of Care and Protection will record the Agreement and keep the original. A copy will be sent to each parent at the address which that parent has given on the Agreement. **A Parental Responsibility Agreement will not take effect until it has been recorded in the Office of Care and Protection.** That date will appear on the copy sent to each parent.

Ending the Agreement
Once a Parental Responsibility Agreement has been made and has taken effect by being recorded in the Office of Care and Protection it can only be brought to an end-
- by an order of the court made on the application of any person who has parental responsibility for the child
- by an order of the court made on the application of the child with the leave of the court
- when the child reaches the age of 18. ”

SCHEDULE 3

Article 3

Other Consequential Amendments Not Relating to Parenthood

Data Protection (Miscellaneous Subject Access Exemptions) Order 2000

1. For Part 1 of the Schedule to the Data Protection (Miscellaneous Subject Access Exemptions) Order 2000(**a**) (enactments and instruments extending to the United Kingdom) substitute—

“Part 1 Enactments and Instruments Extending to the United Kingdom

Human fertilisation and embryology: information.

Sections 31, 31ZA to 31ZE and 33A to 33D of the Human Fertilisation and Embryology Act 1990(**b**).”.

Genetically Modified Organisms (Contained Use) Regulations 2000

2. Regulation 2 of the Genetically Modified Organisms (Contained Use) Regulations 2000(**c**) (interpretation) is amended as follows—

(a) in the definition of “organism” for “or a human embryo” substitute “, human embryo or human admixed embryo”; and

(b) after the definition of “genetic modification” insert—

““human admixed embryo” has the same meaning as it has in the Human Fertilisation and Embryology Act 1990 by virtue of section 4A(6) and (11) of that Act(**a**);

(**a**) S.I. 2000/419; there are no relevant amending instruments.
(**b**) 1990 c. 37. Section 31 was substituted by and sections 31ZA to 31ZE were inserted into the 1990 Act by section 24 of the Human Fertilisation and Embryology Act 2008 (c. 22). Sections 33A to 33D were inserted into the 1990 Act by section 25 of the 2008 Act.
(**c**) S.I. 2000/2831; there are no relevant amending instruments.

"human embryo" means an embryo within the meaning given in the provisions of the Human Fertilisation and Embryology Act 1990(**b**) (apart from section 4A) by virtue of section 1(1) and (6) of that Act;".

Private and Voluntary Health Care (England) Regulations 2001

3.—(1) The Private and Voluntary Health Care (England) Regulations 2001(**c**) are amended as follows.

(2) In regulation 3(2)(d) (prescribed techniques or technology and exceptions to the definition of independent hospital) at the end add "as amended by the Human Fertilisation and Embryology Act 2008(**d**)".

(3) In paragraph 2(f) of Schedule 3 Part II (records to be maintained for inspection) for "section 33(5)" to the end substitute "section 33A(1)(e), (f) and (g) of the Human Fertilisation and Embryology Act 1990(**e**) (disclosure of information).".

Private and Voluntary Health Care (Wales) Regulations 2002

4.—(1) The Private and Voluntary Health Care (Wales) Regulations 2002(**f**) are amended as follows.

(2) In regulation 3(1)(f) (meaning of "independent hospital") at the end add "as amended by the Human Fertilisation and Embryology Act 2008(**g**)".

(3) In paragraph 2(f) of Schedule 3 Part II (records to be maintained for inspection) for "section 33(5)" substitute "section 33A(1)(e), (f) and (g) of the Human Fertilisation and Embryology Act 1990(**h**) (disclosure of information).".

Genetically Modified Organisms (Deliberate Release) Regulations 2002

5. In regulation 2 of the Genetically Modified Organisms (Deliberate Release) Regulations 2002(**i**) (interpretation), insert the following definitions in the appropriate alphabetical place—

""biological matter" means anything (other than an entity mentioned in the definition of organism) which consists of or includes—

(a) tissue or cells (including gametes or propagules) or subcellular entities, of any kind, capable of replication or of transferring genetic material, or

(b) genes or other genetic material, in any form, which are so capable,

and it is immaterial, in determining if something is or is not biological matter, whether it is the product of natural or artificial processes of reproduction or whether or not it has ever been part of a whole organism;";

"human admixed embryo" has the same meaning as it has in the Human Fertilisation and Embryology Act 1990 by virtue of section 4A(6) and (11) of that Act(**j**);

(**a**) 1990 c. 37. Section 4A was inserted into the 1990 Act by section 4 of the Human Fertilisation and Embryology Act 2008 (c. 22) ("the 2008 Act").
(**b**) Section 1(1) was substituted by section 1(2) of the 2008 Act and section 1(6) was inserted into the 1990 Act by section 1(5) of the 2008 Act.
(**c**) S.I. 2001/3968; sub-paragraph (d) was inserted into regulation 3(2) by regulation 3(b) of S.I. 2008/2352.
(**d**) 2008 c. 22. Relevant amendments have been made to paragraph 1 of Schedule 2 to the 1990 Act by section 11 and Schedule 2 to the 2008 Act.
(**e**) 1990 c. 37. Section 33 of the 1990 Act was substituted by section 33A of the Human Fertilisation and Embryology Act 2008 (c. 22).
(**f**) S.I. 2002/325 (W 38); there are no relevant amending instruments.
(**g**) 2008 c. 22. Relevant amendments have been made to paragraph 1 of Schedule 2 to the 1990 Act by section 11 and Schedule 2 to the 2008 Act.
(**h**) 1990 c. 37. Section 33 of the 1990 Act was substituted by section 33A of the Human Fertilisation and Embryology Act 2008 (c. 22).
(**i**) S.I. 2002/2443; there are no relevant amending instruments.
(**j**) 1990 c. 37. Section 4A was inserted into the 1990 Act by section 4 of the Human Fertilisation and Embryology Act 2008 (c. 22) ("the 2008 Act").

"human embryo" means an embryo within the meaning given in the provisions of the Human Fertilisation and Embryology Act 1990(**a**) (apart from section 4A) by virtue of section 1(1) and (6) of that Act; and

"organism" means any acellular, unicellular or multicellular entity (in any form and whether or not it is the product of natural or artificial processes of reproduction), other than humans, human embryos or human admixed embryos; and, unless the context otherwise requires, the term also includes any article or substance consisting of or including biological matter;".

Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations 2004

6.—(1) The Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations 2004(**b**) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) for the definition of "applicant" substitute ""applicant" means a person who has requested information under section 31ZA of the Act(**c**);"; and

(b) at the end insert—

""sperm", "eggs" or "embryos" have the same meaning as they have by virtue of section 1(1), (4) and (6) of the Act in the other provisions of the Act (apart from section 4A)(**d**).".

(3) In regulation 2 (information that the Authority is required to give)—

(a) for paragraph (1) substitute—

"(1) Subject to paragraphs (3A) and (4), the information contained in the register which the Authority is required to give an applicant by virtue of section 31ZA(2)(a) of the Act is any information to which paragraph (2) or (3) applies."; and

(b) after paragraph (3) insert—

"(3A) Where a request is made under section 31ZA(2)(a) of the Act and the applicant has not attained the age of 18 when the applicant gives notice to the Authority under section 31ZA(1) of the Act, the information that the Authority is required to give the applicant is the information to which paragraph (2) applies (and accordingly not information from which the donor may be identified).".

Human Tissue (Quality and Safety for Human Application) Regulations 2007

7. In regulation 5(3) of the Human Tissue (Quality and Safety for Human Application) Regulations 2007(**e**) (interpretation of other terms) after the final reference to "Regulations" insert "and the Human Fertilisation and Embryology Act 2008(**f**)".

Human Fertilisation and Embryology (Quality and Safety) Regulations 2007

8. In regulation 1(4) of the Human Fertilisation and Embryology (Quality and Safety) Regulations 2007(**g**) (citation, commencement and interpretation) after the final reference to "Regulations" insert "and the Human Fertilisation and Embryology Act 2008(**h**)".

(**a**) Section 1(1) was substituted by section 1(2) of the 2008 Act and section 1(6) was inserted into the 1990 Act by section 1(5) of the 2008 Act.
(**b**) S.I. 2004/1511; there are no relevant amending instruments.
(**c**) Section 31ZA was inserted into the Act by section 24 of the Human Fertilisation and Embryology Act 2008 (c. 22) ("the 2008 Act").
(**d**) Relevant amendments have been made to section 1 of the Act by section 1 of the 2008 Act.
(**e**) S.I. 2007/1523; there are no relevant amending instruments.
(**f**) 2008 c. 22. Paragraph 24 of Schedule 7 to the 2008 Act amended section 54 of the Human Tissue Act (c. 30).
(**g**) S.I. 2007/1522; there are no relevant amending instruments.
(**h**) 2008 c. 22.

SCHEDULE 4

Article 4

TRANSITIONAL AND SAVING PROVISIONS

Transitional provisions for licences for treatment

1.—(1) Subject to sub-paragraphs (2) to (4) the provisions of the 1990 Act, as amended by the 2008 Act (including the new definitions of embryos, sperm, eggs and gametes), shall apply to any licence for treatment granted under paragraph 1 of Schedule 2 to the 1990 Act (licences for treatment) on or before 30th September 2009 ("a relevant treatment licence") as they would apply to a licence for treatment granted on or after 1st October 2009.

(2) Where a woman presented for treatment services under a relevant treatment licence on or before 30th September 2009 the requirements of section 13(5) of the 1990 Act (conditions of licences for treatment), prior to its amendment by the 2008 Act(**a**), shall apply in relation to those treatment services.

(3) Where a person has given consent under Schedule 3 to the 1990 Act (consent to use or storage of gametes or embryos) on or before 30th September 2009 in connection with treatment services provided under a relevant treatment licence that consent shall be treated as complying with the requirements of paragraphs 1 and 3(2) of Schedule 3 to the 1990 Act as substituted by the 2008 Act(**b**).

(4) Where the relevant treatment licence was granted under paragraph 1(1)(d) of Schedule 2 to the 1990 Act and authorises practices designed to determine whether embryos are suitable to be placed in a woman, those practices shall be treated as having been authorised in accordance with new paragraph 1ZA (embryo testing) and 1ZB (sex selection) of Schedule 2 to the 1990 Act(**c**).

Transitional provisions for licences for research

2.—(1) Subject to sub-paragraphs (2) to (7) the provisions of the 1990 Act, as amended by the 2008 Act, shall apply to any licence for research granted under paragraph 3 of Schedule 2 to the 1990 Act (licences for research) on or before 30th September 2009 ("a relevant research licence") as they would apply to a licence for research granted on or after 1st October 2009.

(2) Where a relevant research licence authorises the creation, storage or use of embryos the meaning of "embryo" for the purpose of that licence is the meaning under section 1(1) of the 1990 Act (meaning of embryo, gamete and associated expressions), prior to its amendment by the 2008 Act, and the creation, storage or use of an embryo under the relevant research licence shall be treated as authorised under paragraph 3 of Schedule 2 to the 1990 Act as substituted by the 2008 Act(**d**).

(3) Where a relevant research licence authorises the storage of eggs, sperm or gametes the meaning of "eggs", "sperm" and "gametes" for the purpose of that licence is the meaning in section 1(4) of the 1990 Act, prior to its substitution by the 2008 Act(**e**), and the storage of eggs, sperm or gametes under the relevant research licence shall be treated as authorised under paragraph 3 of Schedule 2 to the 1990 Act as substituted by the 2008 Act.

(4) Where the activities licensed under a relevant research licence fall within new section 4A of the 1990 Act(**f**) (prohibitions in connection with genetic material not of human origin) the activities that have been licensed shall be treated as lawfully authorised in accordance with section 4A of that Act.

(**a**) Section 13(5) is amended by section 14(2) of the 2008 Act.
(**b**) Paragraph 1 of Schedule 3 to the 1990 Act is substituted by paragraph 3 of Schedule 3 to the 2008 Act and paragraph 3(2) of Schedule 3 to the 1990 Act is amended by paragraph 5 of Schedule 3 to the 2008 Act.
(**c**) Paragraphs 1ZA and 1ZB are inserted into Schedule 2 to the 1990 Act by paragraph 3 of Schedule 2 to the 2008 Act.
(**d**) Paragraph 3 of Schedule 2 to the 1990 Act is substituted by paragraph 6 of Schedule 2 to the 2008 Act.
(**e**) Section 1(4) of the 1990 Act is substituted by section 1(4) of the 2008 Act.
(**f**) Section 4A is inserted into the 1990 Act by section 4(2) of the 2008 Act.

(5) Where a relevant research licence authorises the use of human cells of a person ("P") to bring about the creation of an embryo, as defined in section 1(1) of the 1990 Act prior to its substitution by the 2008 Act(**a**), it is a condition of the relevant research licence that steps shall be taken to ensure that the embryo cannot subsequently be attributed to P.

(6) Where the provisions of Schedule 3 to the 1990 Act, prior to its amendment by the 2008 Act(**b**), are complied with as a condition of a relevant research licence, the provisions of Schedule 3 to the 1990 Act, as amended by the 2008 Act, shall be treated as complied with in relation to any research project commenced under that research licence on or before 30th September 2009.

(7) Where a relevant research licence authorises activities in connection with the derivation from embryos of stem cells, and it is intended that such stem cells be used in human application, an application must be made to the Authority to grant a new licence for research under paragraph 3 of Schedule 2 to the 1990 Act as substituted by the 2008 Act.

Transitional provisions for licences for storage

3.—(1) Subject to sub-paragraph (2) the provisions of the 1990 Act, as amended by the 2008 Act (including the new definitions of embryos, sperm, eggs and gametes), shall apply to any licence for storage granted under paragraph 2 of Schedule 2 to the 1990 Act (licences for storage) on or before 30th September 2009 ("a relevant storage licence") as they would apply to a licence for storage granted on or after 1st October 2009.

(2) Where a person has given consent under Schedule 3 to the 1990 Act (consent to use or storage of gametes or embryos) on or before 30th September 2009 in connection with the storage of an embryo or gametes under a relevant storage licence that consent shall be treated as complying with the requirements of paragraphs 1 and 3(2) of Schedule 3 to the 1990 Act as substituted by the 2008 Act .

Transitional provisions for licences for non-medical fertility services

4.—(1) Subject to sub-paragraph (2) the provisions of the 1990 Act, as amended by the 2008 Act (including the new definitions of embryos, sperm, eggs and gametes), shall apply to any licence for non-medical fertility services granted under paragraph 1A of Schedule 2 to the 1990 Act(**c**) (licences for non-medical fertility services) on or before 30th September 2009 ("a relevant non-medical fertility service licence") as they would apply to a licence for non-medical fertility services granted on or after 1st October 2009.

(2) Where a person has provided sperm on or before 30th September 2009 for the purpose of use under a relevant non medical fertility service licence, paragraph 5(1) of Schedule 3 to the 1990 Act (use of gametes for treatment of others) as amended by the 2008 Act(**d**), shall not apply to the use of those gametes.

Transitional provisions for requests for information

5. Where a person has given notice to the Authority under section 31(6) of the 1990 Act (the Authority's register of information) on or before 30th September 2009 and the Authority has not provided the information under section 31(7) of the 1990 Act, the notice shall be treated as notice under new section 31ZB(2)(a) of the 1990 Act(**e**) (request for information as to intended spouse etc).

(**a**) Section 1(1) of the 1990 Act is substituted by section 1(2) of the 2008 Act.
(**b**) Schedule 3 to the 1990 Act is amended by Schedule 3 to the 2008 Act.
(**c**) Paragraph 1A was inserted into the 1990 Act by S.I. 2007/1522.
(**d**) Paragraph 5(1) of Schedule 3 to the 1990 Act is amended by paragraph 8 of Schedule 3 to the 2008 Act.
(**e**) Section 31ZB is inserted into the 1990 Act by section 24 of the 2008 Act.

Transitional provisions relating to enforcement

6.—(1) Where a member or employee of the Authority took possession of something on or before 30th September 2009 under section 39(1)(a) of the 1990 Act (powers of members and employees of Authority) the thing taken may be retained for so long as it may be required for the purpose for which it was taken under section 39(1)(a)(i) or (ii) of the 1990 Act ("the relevant purpose").

(2) Where a member or employee of the Authority on or before 30th September 2009 has taken such steps as are necessary under section 39(1)(b) of the 1990 Act to preserve any thing or to prevent interference with it, including requiring any person having the power to do so to give such assistance as may reasonably be required, the Authority shall be able to continue to take such steps for the relevant purpose under sub-paragraph (1).

(3) Any warrant that was issued under section 40(1) of the 1990 Act (power to enter premises) on or before 30th September, which has not been exercised and has not expired on the 1st October 2009, shall be treated as a warrant issued under paragraph 5 of Schedule 3B to the 1990 Act(**a**) (entry and search in connection with suspected offence), and paragraphs 6 to 11 of that Schedule shall apply to that warrant accordingly.

Transitional provisions relating to licence committees

7.—(1) Where a licence committee has arranged for the inspection of premises under section 9(7), (7A), (8) or (10A) of the 1990 Act(**b**) (licence committees and other committees) on or before 30th September 2009, but the inspection of those premises has not taken place before 1st October 2009, the relevant inspection shall be carried out in accordance with paragraphs 2 to 4 of Schedule 3B to the 1990 Act and a report on the inspection shall be made to the Authority, where required.

(2) Where an inspection of premises has taken place under section 9(7), (7A), (8) or (10A) of the 1990 Act before 1st October 2009 but the report that was requested in relation to that inspection has not been provided to the Authority, the report shall be provided to the Authority in accordance with section 9(7) to (11) of the 1990 Act.

Transitional provisions relating to revocation and variation of licence

8.—(1) Where an application to revoke a licence has been made under section 18(4) of the 1990 Act (revocation and variation of licence) on or before 30th September 2009 but no proposal as referred to in section 19(1) and (2) of the 1990 Act (procedure for refusal, variation or revocation of licence) has been reached by a licence committee the application shall be treated as an application under section 18(1) of the 1990 Act, as substituted by the 2008 Act(**c**) (revocation of licence).

(2) Where an application has been made to vary a licence under section 18(4) of the 1990 Act (revocation and variation of licence) on or before 30th September 2009 but no proposal as referred to in section 19(1) and (2) of the 1990 Act has been reached by a licence committee the application shall be treated as an application under section 18A(2) of the 1990 Act(**d**) (variation of licence).

(3) Where an application has been made to vary a licence so as to designate another individual in place of the person responsible under section 18(5) of the 1990 Act (revocation and variation of licence) on or before 30th September 2009 but no proposal as referred to in section 19(1) and (2) of the 1990 Act has been reached by a licence committee the application shall be treated as an application under section 18A(1) of the 1990 Act.

(**a**) Schedule 3B is inserted into the 1990 Act by Schedule 5 of the 2008 Act.
(**b**) Section 9(7A) and (10A) were inserted into the 1990 Act and section 9(8) of the 1990 Act was substituted by S.I. 2007/1522.
(**c**) Section 18 of the 1990 Act is substituted by section 18 of the 2008 Act.
(**d**) Section 18A is inserted into the 1990 Act by section 18 of the 2008 Act.

Transitional and saving provisions relating to procedure for refusal, variation or revocation of licence

9.—(1) This sub-paragraph applies in a case where a licence committee has reached a proposal as referred to in section 19(1) or (2) of the 1990 Act on or before 30th September 2009 but a licensing decision has not been made.

(2) Where sub-paragraph (1) applies—

(a) the licence committee that reached the proposal shall determine the case in accordance with sections 18 and 19 of the 1990 Act, as they applied immediately prior to their substitution by the 2008 Act, and the regulations made under section 10 of the 1990 Act (licensing procedure);

(b) the decision of the licence committee in relation to that case shall be treated as a decision of the Authority for the purpose of section 20(1) and (2) of the 1990 Act, as substituted by the 2008 Act(**a**) (right to reconsideration of licensing decisions); and

(c) the reference in section 20(3) of the 1990 Act, as substituted by the 2008 Act, to the notice given under section 19A shall be read as a reference to the notice given under section 19(5) of the 1990 Act prior to substitution by the 2008 Act.

(3) This sub-paragraph applies where a licence committee has given notice of a licensing decision in accordance with section 19(5) and (6) of the 1990 Act on or before 30th September 2009, but on 1st October 2009 28 days have not elapsed from the date such notice was served on the applicant.

(4) Where sub-paragraph (3) applies—

(a) the decision of the licence committee in relation to that case shall be treated as a decision of the Authority for the purpose of section 20(1) and (2) of the 1990 Act, as substituted by the 2008 Act (right to reconsideration of licensing decisions); and

(b) the reference in section 20(3) of the 1990 Act, as substituted by the 2008 Act, to the notice given under section 19A shall be read as a reference to the notice given under section 19(5) of the 1990 Act prior to substitution by the 2008 Act.

Transitional provisions relating to reconsideration of licensing decisions

10.—(1) This sub-paragraph applies to any appeal in relation to which notice of the appeal was served on the Authority before 1st October 2009 in accordance with section 20(1) or (2) of the 1990 Act (appeal to authority against determinations of licence committee) and which has not been determined.

(2) In this paragraph—

"the 1991 Regulations" means the Human Fertilisation and Embryology Authority (Licence Committee and Appeals) Regulations(**b**);

"the 2009 Regulations" means the Human Fertilisation and Embryology (Appeals) Regulations 2009(**c**); and

"the Appeals Committee" means an appeals committee as defined by section 20A(2) of the 1990 Act(**d**) (appeals committee).

(3) Except where sub-paragraph (6) applies, the appeal shall be dealt with by the Appeals Committee in accordance with the 2009 Regulations as modified by sub-paragraphs (4) and (5).

(4) Where sub-paragraph (3) applies, the person appealing ("the appellant") shall provide the Appeals Committee with the information and documents specified in regulation 16(2) of the 2009 Regulations to the extent to which they have not been provided to the Authority under the 1991 Regulations.

(**a**) Section 20 of the 1990 Act is substituted by section 21 of the 2008 Act.
(**b**) S.I. No.1991/1889.
(**c**) S.I. No. [ ]
(**d**) Section 20A is inserted into the 1990 Act by section 21 of the 2008 Act.

(5) Where the Appeals Committee receives information and documents under paragraph (4) the Appeals Committee must—

(a) within 7 days beginning with the date of their receipt, acknowledge receipt of the information and documents to the person who sent them;

(b) send a copy of the information and documents to the Authority within 7 days beginning with the date of their receipt;

(c) require the Authority to provide to the Appeals Committee within 21 days of receipt of the information and documents under sub-paragraph (b) copies of any documents the Authority intends to rely on in relation to the reconsideration; and

(d) within 7 days beginning with the date of their receipt, provide to the appellant or, where appropriate, the appellant's representative copies of any documents provided pursuant to a requirement under sub-paragraph (c).

(6) Where on 1st October 2009 a hearing date has been notified for an appeal or an appeal is being heard, the appeal shall be dealt with by the Authority in accordance with section 20 of the 1990 Act, prior to its substitution by the 2008 Act, and the 1991 Regulations unless the parties and the Authority are content for the Appeals Committee to deal with the appeal under the 2009 Regulations.

(7) Where on 1st October 2009 an appeal has been heard but notice has not been given of the determination the Authority shall give notice of its determination in accordance with section 20(5) of the 1990 Act, prior to its substitution by the 2008 Act.

Transitional provisions relating to appeals to High Court or Court of Session

11.—(1) Where the Authority has given notice of its determination of an appeal under section 20(5) of the 1990 Act, prior to its substitution by the 2008 Act, on or before 30th September 2009 and the period for appeal has not expired such notice shall be treated as a decision on reconsideration for the purpose of section 21 of the 1990 Act, as substituted by the 2008 Act(**a**) (appeal on a point of law).

(2) Where—

(a) paragraph 10(6) of this Schedule applies and the appeal is dealt with by the Authority in accordance with section 20 of the 1990 Act, prior to its substitution by the 2008 Act; or

(b) paragraph 10(7) of this Schedule applies,

the notice of the Authority's determination under section 20(5) of the 1990 Act shall be treated as a decision on reconsideration for the purposes of section 21 of the 1990 Act, as substituted by the 2008 Act.

Transitional provisions relating to suspensions

12. Where a licence was suspended under section 22 of the 1990 Act (temporary suspension of licence) on or before 30th September 2009, and the period of suspension has not yet expired the suspension shall be treated as a suspension under new section 19C of the 1990 Act(**b**)((power to suspend a licence).

Saving provision for information

13. Subject to paragraph 6 of Schedule 3 and any provision made by regulations under section 31ZA of the 1990 Act (request for information as to genetic parentage etc.) following the commencement of section 24 of the 2008 Act (register of information)—

(a) the Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations 2004 ("the 2004 Regulations") shall continue to have effect; and

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(**a**) Section 21 of the 1990 Act is substituted by section 21 of the 2008 Act.
(**b**) Section 19C is inserted into the 1990 Act by section 19 of the 2008 Act.

(b) section 31 of the 1990 Act as in force immediately before the commencement of section 24 of the 2008 Act shall continue to have effect for the purposes of enabling provision to be made amending or revoking the 2004 Regulations,

notwithstanding the substitution of section 31 of the 1990 Act (the Authority's register of information) by section 24 of the 2008 Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under sections 61 and 64 of the Human Fertilisation and Embryology Act 2008 ("the 2008 Act").

Article 2 and Schedules 1 and 2 to the Order make consequential amendments relating to the parenthood provisions contained in Part 2 of the 2008 Act. Amendments are made to both primary and secondary legislation to ensure that a woman who is a parent of a child by virtue of section 42 (civil partner at time of treatment) or 43 (agreed second female parent) of the 2008 Act, has the same rights and obligations as any other legal parent of a child. The key areas amended for England and Wales relate to birth registration, protected person status, prohibited family relationships (marriage and civil partnerships), adoption, court rules, immigration and parental orders. In addition amendments are made to Northern Ireland legislation relating to birth registration and parental responsibility.

Article 3 and Schedule 3 make other consequential amendments to secondary legislation not relating to the parenthood provisions. Amendments are made to update references to the terms "embryos" and "gametes" to reflect the amendments to these definitions in the Human Fertilisation and Embryology Act 1990 ("the 1990 Act), made by the 2008 Act. Other references to provisions of the 1990 Act which have been amended are also updated, including changes to the information provisions.

Article 4 and Schedule 4 make transitional and saving provisions. The licensing obligations are set out for any person holding a treatment, research, storage or non medical fertility licence under the 1990 Act which was granted on or before 30th September 2009 and which is still operative on 1st October 2009. Provision is also made for any outstanding requests for information, inspections and enforcement proceedings involving the Human Fertilisation and Embryology Authority ("the HFEA"). The procedure at the HFEA in relation to outstanding applications for revocations and variations of licences, licensing decisions, reconsideration of licensing decisions, appeals and suspension is also provided for.

Provision is made so that The Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations 2004 will remain in force (subject to the amendments made by paragraph 6 of Schedule 3 to the Order) as will section 31 of the 1990 Act for the purpose of amending or revoking those Regulations.

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Draft Order laid before Parliament under section 62(3) of the Human Fertilisation and Embryology Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. 00

HUMAN FERTILISATION AND EMBRYOLOGY

The Human Fertilisation and Embryology (Consequential Amendments and Transitional and Saving Provisions) Order 2009

£5.50

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