

SCHEDULES

SCHEDULE 7

Section 65

MINOR AND CONSEQUENTIAL AMENDMENTS

Congenital Disabilities (Civil Liability) Act 1976 (c. 28)

- 1 In section 4 of the Congenital Disabilities (Civil Liability) Act 1976 (interpretation), in subsection (2), for “section 1 of the Human Fertilisation and Embryology Act 1990” substitute “section 1(1) of the Human Fertilisation and Embryology Act 1990 and any regulations under section 1(6) of that Act”.

Human Fertilisation and Embryology Act 1990 (c. 37)

- 2 In section 2 of the 1990 Act (other terms)—
- (a) in subsection (1), in the definition of “store”, for “or embryos” substitute “, embryos or human admixed embryos”, and
 - (b) in subsection (2), for “or gametes” substitute “, gametes or human admixed embryos”.
- 3 In section 7 of the 1990 Act (reports to Secretary of State) for subsection (1) substitute—
- “(1) The Authority shall prepare—
- (a) a report for the period beginning with the 1 August preceding the relevant commencement date (or if that date is a 1 August, beginning with that date) and ending with the next 31 March, and
 - (b) a report for each succeeding period of 12 months ending with 31 March.
- (1A) In subsection (1)(a) “the relevant commencement date” means the day on which paragraph 3 of Schedule 7 to the Human Fertilisation and Embryology Act 2008 comes into force.
- (1B) The Authority shall send each report to the Secretary of State as soon as practicable after the end of the period for which it is prepared.”
- 4 Omit section 10 of the 1990 Act (licensing procedure).
- 5 In section 13A of the 1990 Act (conditions of licences for non-medical fertility services), omit subsection (4).
- 6 In section 14A of the 1990 Act (conditions of licences: human application), in subsection (1)—
- (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

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- from embryos of stem cells that are intended for human application.”
- 7 In section 15 of the 1990 Act (conditions of research licences) after subsection (4) insert—
- “(5) If by virtue of paragraph 20 of Schedule 3 (existing cells or cell lines) qualifying cells, as defined by paragraph 20(2) of that Schedule, of a person (“P”) are used to bring about the creation *in vitro* of an embryo or human admixed embryo without P’s consent, steps shall be taken to ensure that the embryo or human admixed embryo cannot subsequently be attributed to P.”
- 8 Omit section 22 of the 1990 Act (temporary suspension of licence).
- 9 In section 23 of the 1990 Act (directions: general)—
- (a) in subsection (5), for paragraph (a) substitute—
- “(a) in respect of any licence (including a licence which has ceased to have effect), by serving notice of the directions on the person—
- (i) who is the person responsible or the holder of the licence, if different, or
- (ii) who was the person responsible or the holder of the licence, if different,” and
- (b) omit subsection (6).
- 10 (1) Section 31A of the 1990 Act (the Authority’s register of licences) is amended as follows.
- (2) In subsection (1)—
- (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 Schedule 2 authorising activities in connection with the derivation from embryos of stem cells that are intended for human application.”.
- (3) In subsection (2)(c), for “, if applicable, the nominal licensee” substitute “the name of the holder of the licence (if different)”.
- 11 In section 32 of the 1990 Act (information to be provided to Registrar General), in subsection (3), for “33” substitute “33A”.
- 12 In section 34 of the 1990 Act (disclosure in the interests of justice), in subsection (1), for “section 31(2)(b)” substitute “section 31(2)(c) to (e)”.
- 13 In section 47 of the 1990 Act (index)—
- (a) in the first column, after “embryo” insert “(except in section 4A or in the term “human admixed embryo””,
- (b) in the first column, after “gametes, eggs or sperm”, insert “(except in section 4A)”,
- (c) in the first column, in the entry relating to “store”, after “embryos” insert “, human admixed embryos”,
- (d) at the appropriate places insert—

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“Human admixed embryo	Section 4A(6)”
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“Nuclear DNA (in relation to an embryo)	Section 2(1)”, and
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(e) omit the entries relating to “licence committee” and “nominal licensee”.

14 In section 48 of the 1990 Act (application to Northern Ireland) for “sections 33(6)(h) and” substitute “sections 33A(2)(r) and”.

15 In Schedule 1 to the 1990 Act (the Authority: supplementary provision)—

(a) in paragraph 9(1), for “The” substitute “Subject to any provision of this Act, the”,

(b) in paragraph 10(3), omit “or any licence committee”, and

(c) after paragraph 14, insert—

“Application of Statutory Instruments Act 1946

15 The Statutory Instruments Act 1946 applies to any power to make orders or regulations conferred by an Act on the Authority as if the Authority were a Minister of the Crown.”

Age of Legal Capacity (Scotland) Act 1991 (c. 50)

16 In section 2 of the Age of Legal Capacity (Scotland) Act 1991, after subsection (4) (which provides for an exception to the general rule about the age of legal capacity in relation to surgical, medical or dental procedure or treatment) insert—

“(4ZA) For the purposes of subsection (4), the storage of gametes in accordance with the Human Fertilisation and Embryology Act 1990 is to be treated as a medical procedure.

(4ZB) A person under the age of 16 years shall have legal capacity to consent to the use of the person’s human cells in accordance with Schedule 3 to the Human Fertilisation and Embryology Act 1990 for the purposes of a project of research where the person is capable of understanding the nature of the research; and in this subsection “human cells” has the same meaning as in that Schedule.”

Children (Scotland) Act 1995 (c. 36)

17 In section 15 of the Children (Scotland) Act 1995 (interpretation of Part 1), after subsection (6) insert—

“(7) No provision in this Part of this Act shall permit a person to give a consent to the storage of gametes under the Human Fertilisation and Embryology Act 1990 on behalf of a child.”

Adults with Incapacity (Scotland) Act 2000 (asp 4)

18 After section 84 of the Adults with Incapacity (Scotland) Act 2000 insert—

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“84A Application to storage of gametes without adult’s consent where adult is incapable

- (1) The storage of gametes under paragraph 10 of Schedule 3 to the Human Fertilisation and Embryology Act 1990 (storage of gametes without patient’s consent where patient is incapable) is to be treated as an intervention in the affairs of an adult under this Act.
- (2) Sections 2 to 5, 8, 11, 14 and 85 of this Act apply to a registered medical practitioner’s decision under that paragraph as they apply to decisions taken for the purposes of this Act.
- (3) Section 52 of this Act applies to a practitioner’s decision under that paragraph as it applies to decisions taken for the purposes of section 47 of this Act.
- (4) Part 5 of this Act (other than section 52) does not apply to the storage of gametes under that paragraph.
- (5) Section 83 of this Act applies to a practitioner’s decision under that paragraph as if the practitioner were exercising powers under this Act.
- (6) Nothing in this section authorises any person, other than the person whose gametes are to be stored, to consent to the storage of the gametes.

84B Application to use of human cells to create an embryo in vitro without adult’s consent

- (1) The use of an adult’s human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of a project of research—
 - (a) without the adult’s consent, and
 - (b) where the adult is incapable,is to be treated as an intervention in the affairs of an adult under this Act.
- (2) Sections 2 to 5, 8, 11, 14 and 85 of this Act apply to decisions made under paragraphs 16 and 18 of Schedule 3 to the Human Fertilisation and Embryology Act 1990 (when consent to the use of human cells is not required due to adult being incapable of consenting) as they apply to decisions taken for the purposes of this Act.
- (3) Section 51 of this Act does not apply to the use of an adult’s human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of a project of research.
- (4) Section 83 of this Act applies to a decision made under paragraphs 16 and 18 of Schedule 3 to the Human Fertilisation and Embryology Act 1990 as if the person making the decision were exercising powers under this Act.
- (5) Expressions used in this section and in Schedule 3 to the Human Fertilisation and Embryology Act 1990 have the same meaning in this section as in that Schedule.”

Criminal Justice and Police Act 2001 (c. 16)

- 19 In section 57 of the Criminal Justice and Police Act 2001 (retention of seized items), in subsection (1)(k), for “section 40(4) of” substitute “paragraph 7(4) of Schedule 3B to”.
- 20 In section 66 of the Criminal Justice and Police Act 2001 (general interpretation of Part 2)—
- (a) in subsection (4), after paragraph (j) insert—
 - “(ja) paragraph 5 of Schedule 3B to the Human Fertilisation and Embryology Act 1990.”, and
 - (b) in subsection (5), omit paragraph (g).
- 21 In Schedule 1 to the Criminal Justice and Police Act 2001 (powers of seizure) for paragraph 52 substitute—
- “52 Each of the powers of seizure conferred by the provisions of paragraph 7(1) and (2) of Schedule 3B to the Human Fertilisation and Embryology Act 1990.”

Human Tissue Act 2004 (c. 30)

- 22 In section 1 of the Human Tissue Act 2004 (authorisation of activities for scheduled purposes)—
- (a) after subsection (9) insert—
 - “(9A) Subsection (1)(f) does not apply to the use of relevant material for the purpose of research where the use of the material requires consent under paragraph 6(1) or 12(1) of Schedule 3 to the Human Fertilisation and Embryology Act 1990 (use of human cells to create an embryo or a human admixed embryo) or would require such consent but for paragraphs 16 and 20 of that Schedule.”, and
 - (b) after subsection (10) insert—
 - “(10A) In the case of an activity in relation to which subsection (8) has effect, subsection (10)(c) is to be read subject to any requirements imposed by Schedule 3 to the Human Fertilisation and Embryology Act 1990 in relation to the activity.”
- 23 In section 14 of the Human Tissue Act 2004 (remit of the Human Tissue Authority), after subsection (2) insert—
- “(2ZA) The activities within the remit of the Authority do not include the use, for a scheduled purpose, of relevant material where the use of the material requires consent under paragraph 6(1) or 12(1) of Schedule 3 to the Human Fertilisation and Embryology Act 1990 (use of human cells to create an embryo or a human admixed embryo) or would require such consent but for paragraphs 16 and 20 of that Schedule.”
- 24 In section 54 of the Human Tissue Act 2004 (general interpretation), for subsection (6), substitute—
- “(6) In this Act “embryo” and “gametes” have the same meaning as they have by virtue of section 1(1), (4) and (6) of the Human Fertilisation and Embryology Act 1990 in the other provisions of that Act (apart from section 4A).”

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Mental Capacity Act 2005 (c. 9)

25 In section 30 of the Mental Capacity Act 2005 (research), after subsection (3) insert—

“(3A) Research is not intrusive to the extent that it consists of the use of a person’s human cells to bring about the creation *in vitro* of an embryo or human admixed embryo, or the subsequent storage or use of an embryo or human admixed embryo so created.

(3B) Expressions used in subsection (3A) and in Schedule 3 to the Human Fertilisation and Embryology Act 1990 (consents to use or storage of gametes, embryos or human admixed embryos etc.) have the same meaning in that subsection as in that Schedule.”