
STATUTORY INSTRUMENTS

2009 No. 479 (C. 32)

HUMAN FERTILISATION AND EMBRYOLOGY

**The Human Fertilisation and Embryology Act 2008
(Commencement No.1 and Transitional Provisions) Order 2009**

Made - - - - 3rd March 2009

The Secretary of State, in exercise of the powers conferred by sections 61 and 68 of the Human Fertilisation and Embryology Act 2008(1) makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Human Fertilisation and Embryology Act 2008 (Commencement No.1 and Transitional Provisions) Order 2009.

(2) In this Order,

“the Act” means the Human Fertilisation and Embryology Act 2008;

“the 1990 Act” means the Human Fertilisation and Embryology Act 1990(2); and

“the Authority” means the Human Fertilisation and Embryology Authority.

Appointed day for provisions relating to the power to contract out functions

2. 6th April 2009 is the day appointed for the coming into force of section 8 (power to contract out functions etc.) of the Act for the purpose of inserting new sections 8B (agency arrangements and provision of services), 8C(1) to (6) (contracting out functions of Authority) and section 8D (disclosure of information where functions of Authority exercised by others) into the 1990 Act but only for the purpose of enabling the establishment of one or more committees to carry out the Authority’s functions under new section 20 of the 1990 Act (right to reconsideration of licensing decisions) when it is brought into force.

Appointed day for provisions relating to the appointment of the appeals committee

3. 6th April 2009 is the day appointed for the coming into force of section 21 (reconsideration and appeals) of the Act for the purpose of inserting new section 20A(1) and (2) (appeals committee) into the 1990 Act to enable the establishment of one or more committees to carry out the Authority’s functions under new section 20 of the 1990 Act when it is brought into force.

(1) 2008 c. 22.

(2) 1990 c. 37.

Appointed day for provisions relating to conditions of licences for treatment

4. 6th April 2009 is the day appointed for the coming into force of the following provisions of the Act—

- (a) section 14(3), 14(5) and in so far as it relates to section 14(3), 14(1) (conditions of licences for treatment); and
- (b) Schedule 4 (Schedule inserted into the 1990 Act as Schedule 3ZA).

Appointed day for regulation-making powers

5. 6th April 2009 is the day appointed for the coming into force of the following provisions of the Act—

- (a) section 15(3) and (5) (conditions of storage licences) and Schedule 8 for the purpose of the repeal of words in section 14(5) of the 1990 Act, and in so far as it relates to that repeal, section 66 (repeals and revocations) for the purpose of making regulations under section 14(5) of the 1990 Act (conditions of storage licences);
- (b) section 19 (procedure for refusal, variation or revocation of licence) for the purpose of enabling regulations to be made under new section 19(6) of the 1990 Act (procedure in relation to licensing decisions) and directions to be made under new section 19B(1) of the 1990 Act (applications under this Act);
- (c) section 21 (reconsideration and appeals) for the purpose of enabling regulations to be made under new section 20A(3), (4) and (5) (appeals committee) and new section 20B(2) to (6) (procedure on reconsideration) of the 1990 Act;
- (d) section 24 (register of information) for the purpose of enabling regulations to be made under new section 31ZA(2)(a) (request for information as to genetic parentage etc.) of the 1990 Act;
- (e) section 25 (restrictions on the disclosure of information) for the purpose of enabling regulations to be made under new section 33D (disclosure for the purposes of medical or other research) of the 1990 Act;
- (f) section 30 (regulations under the 1990 Act);
- (g) paragraph 15(c) of Schedule 7 (minor and consequential amendments) and in so far as it relates to that paragraph, section 65 (minor and consequential amendments); and
- (h) any provision of the Act in so far as the provision or any amendment made by the provision, defines any expression relevant to the exercise of any power to make orders, regulations or directions under the Act or any provision conferred or amended by the Act that is commenced by this Order.

Appointed day for provisions relating to parenthood in cases involving assisted reproduction

6.—(1) 6th April 2009 is the day appointed for the coming into force of the following provisions of the Act—

- (a) sections 33 to 53;
- (b) section 57(1) and (2) (repeals and transitional provision relating to Part 2);
- (c) section 58 (interpretation of Part 2);
- (d) paragraphs 13 to 15, 22, 24, 25, 33 to 35, 36 for the purpose of substituting case B1 only, 40, 57 to 59, 67 and 69 for the purpose of substituting case B1 only, of Schedule 6 (amendments relating to parenthood in cases involving assisted reproduction);
- (e) paragraphs 1 to 12, 16 to 19, 23, 26 to 32, 39, 41 to 56, 60 to 66, 68, 70 to 72, and 74 to 78, of Schedule 6, and in so far as it relates to the repeal of those provisions, section 66

(repeals and revocations) for the purpose of enabling the exercise of any power to make orders, regulations or other instruments or other documents; and

(f) section 56 (amendments relating to parenthood in cases involving assisted reproduction) in so far as it relates to the provisions listed in sub-paragraphs (d) and (e).

(2) 1st September 2009 is the day appointed for the coming into force of section 56 of the Act and paragraphs 1 to 12, 16 to 19, 23, 26 to 32, 39, 41 to 56, 60 to 66, 68, 70 to 72, and 74 to 78, of Schedule 6 to the Act, and Schedule 8 to the Act for the purpose of the repeal of paragraphs 3, 5, 7, 9, 10, 12 and 18 of the Schedule to the Human Fertilisation and Embryology (Deceased Fathers) Act 2003⁽³⁾, and in so far as it relates to the repeal of those provisions, section 66 (repeals and revocations), in so far as not already in force.

(3) 1st September 2009 is the day appointed for the coming into force of Schedule 8 of the Act for the purpose of the repeal of section 1(4) of the Family Law Act (Northern Ireland) 2001⁽⁴⁾ and the revocation relating to Article 7 of the Children (Northern Ireland) Order 1995⁽⁵⁾ and in so far as it relates to the repeal and revocation of those provisions, section 66 (repeals and revocations).

Transitional provisions

7.—(1) The transitional provisions in the Schedule shall have effect.

(2) Paragraph (1) shall come into force on 6th April 2009.

Signed by authority of the Secretary of State for Health.

3rd March 2009

Dawn Primarolo
Minister of State,
Department of Health

(3) 2003. c.24.

(4) 2001 c. 12. (N.I.).

(5) S.I. 1995/755 (N.I. 2).

SCHEDULE 1

Article 7

Transitional Provisions

Conditions of licences for treatment

1.—(1) Subject to paragraph (2) the conditions set out in paragraphs (3) to (8) shall apply to any licences for treatment issued on or before 5th April 2009.

(2) Where a woman who began treatment services of a kind specified in Part 1 of new Schedule 3ZA to the 1990 Act (kinds of treatment in relation to which counselling must be offered) on or before 5th April 2009, and has had an embryo or gametes placed in her before that date, the new licence conditions under paragraphs (3) and (6) to provide counselling and information do not apply in respect of treatment services using that embryo or those gametes.

(3) A woman shall not be provided with treatment services of a kind specified in Part 1 of new Schedule 3ZA to the 1990 Act 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.

(4) A woman shall not be provided with treatment services after the happening of any event falling within any paragraph of Part 2 of new Schedule 3ZA to the 1990 Act (events in connection with which counselling must be offered) 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.

(5) The reference in paragraph (4) to the intended second parent is a reference to—

- (a) any man as respects whom the agreed fatherhood conditions in section 37 (the agreed fatherhood conditions) of the Act are for the time being satisfied in relation to treatment provided to the woman mentioned in paragraph (4), and
- (b) any woman as respects whom the agreed female parenthood conditions in section 44 (the agreed female parenthood conditions) of the Act are for the time being satisfied in relation to treatment provided to the woman mentioned in paragraph (4).

(6) In the case of treatment services falling within paragraph 1 of new Schedule 3ZA to the 1990 Act (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 paragraphs (3) or (4) 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.

(7) Where the person responsible receives from a person (“X”) notice under section 37(1)(c) or 44(1)(c) of the 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.

(8) 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 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 Act of the withdrawal of W’s consent, or

(b) a notice under section 37(1)(b) or 44(1)(b) of the 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).

(9) In this Schedule “person responsible” has the meaning given by section 17 of the 1990 Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force certain provisions of the Human Fertilisation and Embryology Act 2008 (“the Act”), and makes transitional provision in respect of some of those provisions.

Articles 2 and 3 bring into force on 6th April 2009 the relevant provisions of the Act to enable the appointment of one or more committees which will then carry out the Authority’s functions in relation to the reconsideration of licensing decisions once new section 20 of the Human Fertilisation and Embryology Act 1990 (“the 1990 Act”) is brought into force.

Article 4 brings into force on 6th April 2009 provisions of the Act which insert new licence conditions into the 1990 Act in relation to the provision of information, counselling and notifications to couples undergoing treatment at a licensed clinic. Article 7 and the Schedule to the Order makes transitional provision to apply these new conditions to all licences for treatment issued on or before 5th April 2009. However, the obligations relating to information and counselling will not apply to women who began treatment services on or before 5th April 2009, who have already had embryos or gametes implanted, in relation to those embryos or gametes.

Article 5 brings into force on 6th April 2009 regulation-making powers under the Act. Provisions in the Act are also brought into force for the purpose of defining expressions which are relevant to the powers commenced.

Article 6 brings into force on 6th April 2009 the majority of Part 2 of the Act, which makes provision for parenthood in cases involving assisted reproduction. Provision is also made to commence various consequential amendments related to Part 2 in Schedule 6 to the Act on 6th April 2009. Other consequential amendments in Schedule 6 to the Act are commenced on 6th April 2009 for the purpose of making the necessary changes to any connected regulations, instruments or other documents and are commenced fully on 1st September 2009.