

Human Fertilisation and Embryology Act 1990 (c. 37)
1990 c. 37 - continued

An Act to make provision in connection with human embryos and any subsequent development of such embryos; to prohibit certain practices in connection with embryos and gametes; to establish a Human Fertilisation and Embryology Authority; to make provision about the persons who in certain circumstances are to be treated in law as the parents of a child; and to amend the Surrogacy Arrangements Act 1985.

[1st November 1990]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Principal terms used

Meaning of "embryo", "gamete" and associated expressions.

1. (1) In this Act, except where otherwise stated—
 - (a) embryo means a live human embryo where fertilisation is complete, and
 - (b) references to an embryo include an egg in the process of fertilisation, and, for this purpose, fertilisation is not complete until the appearance of a two cell zygote.
- (2) This Act, so far as it governs bringing about the creation of an embryo, applies only to bringing about the creation of an embryo outside the human body; and in this Act—
 - (a) references to embryos the creation of which was brought about in vitro (in their application to those where fertilisation is complete) are to those where fertilisation began outside the human body whether or not it was completed there, and
 - (b) references to embryos taken from a woman do not include embryos whose creation was brought about in vitro.
- (3) This Act, so far as it governs the keeping or use of an embryo, applies only to keeping or using an embryo outside the human body.
- (4) References in this Act to gametes, eggs or sperm, except where otherwise stated, are to live human gametes, eggs or sperm but references below in this

Act to gametes or eggs do not include eggs in the process of fertilisation.

Other terms.

2. (1) In this Act—

"the Authority" means the Human Fertilisation and Embryology Authority established under section 5 of this Act,

"directions" means directions under section 23 of this Act,

"licence" means a licence under Schedule 2 to this Act and, in relation to a licence, "the person responsible" has the meaning given by section 17 of this Act, and

"treatment services" means medical, surgical or obstetric services provided to the public or a section of the public for the purpose of assisting women to carry children.

(2) References in this Act to keeping, in relation to embryos or gametes, include keeping while preserved, whether preserved by cryopreservation or in any other way; and embryos or gametes so kept are referred to in this Act as "stored" (and "store" and "storage" are to be interpreted accordingly).

(3) For the purposes of this Act, a woman is not to be treated as carrying a child until the embryo has become implanted.

Activities governed by the Act

Prohibitions in connection with embryos.

3. (1) No person shall—

(a) bring about the creation of an embryo, or

(b) keep or use an embryo,

except in pursuance of a licence.

(2) No person shall place in a woman—

(a) a live embryo other than a human embryo, or

(b) any live gametes other than human gametes.

(3) A licence cannot authorise—

(a) keeping or using an embryo after the appearance of the primitive streak,

(b) placing an embryo in any animal,

(c) keeping or using an embryo in any circumstances in which regulations prohibit its keeping or use, or

(d) replacing a nucleus of a cell of an embryo with a nucleus taken from a cell of any person, embryo or subsequent development of an embryo.

(4) For the purposes of subsection (3)(a) above, the primitive streak is to be taken to have appeared in an embryo not later than the end of the period of 14 days beginning with the day when the gametes are mixed, not counting any time during which the embryo is stored.

Prohibitions in connection with gametes.

4. (1) No person shall—
 - (a) store any gametes, or
 - (b) in the course of providing treatment services for any woman, use the sperm of any man unless the services are being provided for the woman and the man together or use the eggs of any other woman, or
 - (c) mix gametes with the live gametes of any animal, except in pursuance of a licence.
- (2) A licence cannot authorise storing or using gametes in any circumstances in which regulations prohibit their storage or use.
- (3) No person shall place sperm and eggs in a woman in any circumstances specified in regulations except in pursuance of a licence.
- (4) Regulations made by virtue of subsection (3) above may provide that, in relation to licences only to place sperm and eggs in a woman in such circumstances, sections 12 to 22 of this Act shall have effect with such modifications as may be specified in the regulations.
- (5) Activities regulated by this section or section 3 of this Act are referred to in this Act as "activities governed by this Act" .

The Human Fertilisation and Embryology Authority, its functions and procedure

The Human Fertilisation and Embryology Authority.

5. (1) There shall be a body corporate called the Human Fertilisation and Embryology Authority.
- (2) The Authority shall consist of—
 - (a) a chairman and deputy chairman, and
 - (b) such number of other members as the Secretary of State appoints.
- (3) Schedule 1 to this Act (which deals with the membership of the Authority, etc.) shall have effect.

Accounts and audit.

6. (1) The Authority shall keep proper accounts and proper records in relation to the accounts and shall prepare for each accounting year a statement of accounts.
- (2) The annual statement of accounts shall comply with any direction given by the Secretary of State, with the approval of the Treasury, as to the information to be contained in the statement, the way in which the information is to be presented or the methods and principles according to which the statement is to be prepared.

- (3) Not later than five months after the end of an accounting year, the Authority shall send a copy of the statement of accounts for that year to the Secretary of State and to the Comptroller and Auditor General.
- (4) The Comptroller and Auditor General shall examine, certify and report on every statement of accounts received by him under subsection (3) above and shall lay a copy of the statement and of his report before each House of Parliament.
- (5) The Secretary of State and the Comptroller and Auditor General may inspect any records relating to the accounts.
- (6) In this section "accounting year" means the period beginning with the day when the Authority is established and ending with the following 31st March, or any later period of twelve months ending with the 31st March.

Reports to Secretary of State.

7. (1) The Authority shall prepare a report for the first twelve months of its existence, and a report for each succeeding period of twelve months, and shall send each report to the Secretary of State as soon as practicable after the end of the period for which it is prepared.
- (2) A report prepared under this section for any period shall deal with the activities of the Authority in the period and the activities the Authority proposes to undertake in the succeeding period of twelve months.
- (3) The Secretary of State shall lay before each House of Parliament a copy of every report received by him under this section.

General functions of the Authority.

8. The Authority shall—
 - (a) keep under review information about embryos and any subsequent development of embryos and about the provision of treatment services and activities governed by this Act, and advise the Secretary of State, if he asks it to do so, about those matters,
 - (b) publicise the services provided to the public by the Authority or provided in pursuance of licences,
 - (c) provide, to such extent as it considers appropriate, advice and information for persons to whom licences apply or who are receiving treatment services or providing gametes or embryos for use for the purposes of activities governed by this Act, or may wish to do so, and
 - (d) perform such other functions as may be specified in regulations.

Licence committees and other committees.

- 9.(1) The Authority shall maintain one or more committees to discharge the

Authority's functions relating to the grant, variation, suspension and revocation of licences, and a committee discharging those functions is referred to in this Act as a "licence committee".

- (2) The Authority may provide for the discharge of any of its other functions by committees or by members or employees of the Authority.
- (3) A committee (other than a licence committee) may appoint sub-committees.
- (4) Persons, committees or sub-committees discharging functions of the Authority shall do so in accordance with any general directions of the Authority.
- (5) A licence committee shall consist of such number of persons as may be specified in or determined in accordance with regulations, all being members of the Authority, and shall include at least one person who is not authorised to carry on or participate in any activity under the authority of a licence and would not be so authorised if outstanding applications were granted.
- (6) A committee (other than a licence committee) or a sub-committee may include a minority of persons who are not members of the Authority.
- (7) Subject to subsection (10) below, a licence committee, before considering an application for authority—
 - (a) for a person to carry on an activity governed by this Act which he is not then authorised to carry on, or
 - (b) for a person to carry on any such activity on premises where he is not then authorised to carry it on,shall arrange for the premises where the activity is to be carried on to be inspected on its behalf, and for a report on the inspection to be made to it.
- (8) Subject to subsection (9) below, a licence committee shall arrange for any premises to which a licence relates to be inspected on its behalf once in each calendar year, and for a report on the inspection to be made to it.
- (9) Any particular premises need not be inspected in any particular year if the licence committee considers an inspection in that year unnecessary.
- (10) A licence committee need not comply with subsection (7) above where the premises in question have been inspected in pursuance of that subsection or subsection (8) above at some time during the period of one year ending with the date of the application, and the licence committee considers that a further inspection is not necessary.
- (11) An inspection in pursuance of subsection (7) or (8) above may be carried out by a person who is not a member of a licence committee.

Licensing procedure.

- 10.(1) Regulations may make such provision as appears to the Secretary of State to be necessary or desirable about the proceedings of licence committees and of

the Authority on any appeal from such a committee.

- (2) The regulations may in particular include provision—
- (a) for requiring persons to give evidence or to produce documents, and
 - (b) about the admissibility of evidence.

Scope of licences

Licences for treatment, storage and research.

- 11.(1) The Authority may grant the following and no other licences—
- (a) licences under paragraph 1 of Schedule 2 to this Act authorising activities in the course of providing treatment services,
 - (b) licences under that Schedule authorising the storage of gametes and embryos, and
 - (c) licences under paragraph 3 of that Schedule authorising activities for the purposes of a project of research.
- (2) Paragraph 4 of that Schedule has effect in the case of all licences.

Licence conditions

General conditions.

12. The following shall be conditions of every licence granted under this Act—
- (a) that the activities authorised by the licence shall be carried on only on the premises to which the licence relates and under the supervision of the person responsible,
 - (b) that any member or employee of the Authority, on production, if so required, of a document identifying the person as such, shall at all reasonable times be permitted to enter those premises and inspect them (which includes inspecting any equipment or records and observing any activity),
 - (c) that the provisions of Schedule 3 to this Act shall be complied with,
 - (d) that proper records shall be maintained in such form as the Authority may specify in directions,
 - (e) that no money or other benefit shall be given or received in respect of any supply of gametes or embryos unless authorised by directions,
 - (f) that, where gametes or embryos are supplied to a person to whom another licence applies, that person shall also be provided with such information as the Authority may specify in directions, and
 - (g) that the Authority shall be provided, in such form and at such intervals as it may specify in directions, with such copies of or extracts from the records, or such other information, as the directions may specify.

Conditions of licences for treatment.

- 13.(1) The following shall be conditions of every licence under paragraph 1 of Schedule 2 to this Act.
- (2) Such information shall be recorded as the Authority may specify in directions about the following—
- (a) the persons for whom services are provided in pursuance of the licence,
 - (b) the services provided for them,
 - (c) the persons whose gametes are kept or used for the purposes of services provided in pursuance of the licence or whose gametes have been used in bringing about the creation of embryos so kept or used,
 - (d) any child appearing to the person responsible to have been born as a result of treatment in pursuance of the licence,
 - (e) any mixing of egg and sperm and any taking of an embryo from a woman or other acquisition of an embryo, and
 - (f) such other matters as the Authority may specify in directions.
- (3) The records maintained in pursuance of the licence shall include any information recorded in pursuance of subsection (2) above and any consent of a person whose consent is required under Schedule 3 to this Act.
- (4) No information shall be removed from any records maintained in pursuance of the licence before the expiry of such period as may be specified in directions for records of the class in question.
- (5) A woman shall not be provided with treatment services unless account has been taken of the welfare of any child who may be born as a result of the treatment (including the need of that child for a father), and of any other child who may be affected by the birth.
- (6) A woman shall not be provided with any treatment services involving—
- (a) the use of any gametes of any person, if that person's consent is required under paragraph 5 of Schedule 3 to this Act for the use in question,
 - (b) the use of any embryo the creation of which was brought about in vitro, or
 - (c) the use of any embryo taken from a woman, if the consent of the woman from whom it was taken is required under paragraph 7 of that Schedule for the use in question,
- unless the woman being treated and, where she is being treated together with a man, the man have been given a suitable opportunity to receive proper counselling about the implications of taking the proposed steps, and have been provided with such relevant information as is proper.
- (7) Suitable procedures shall be maintained—
- (a) for determining the persons providing gametes or from whom embryos are taken for use in pursuance of the licence, and
 - (b) for the purpose of securing that consideration is given to the use of

practices not requiring the authority of a licence as well as those requiring such authority.

Conditions of storage licences.

- 14.(1) The following shall be conditions of every licence authorising the storage of gametes or embryos—
- (a) that gametes of a person or an embryo taken from a woman shall be placed in storage only if received from that person or woman or acquired from a person to whom a licence applies and that an embryo the creation of which has been brought about in vitro otherwise than in pursuance of that licence shall be placed in storage only if acquired from a person to whom a licence applies,
 - (b) that gametes or embryos which are or have been stored shall not be supplied to a person otherwise than in the course of providing treatment services unless that person is a person to whom a licence applies,
 - (c) that no gametes or embryos shall be kept in storage for longer than the statutory storage period and, if stored at the end of the period, shall be allowed to perish, and
 - (d) that such information as the Authority may specify in directions as to the persons whose consent is required under Schedule 3 to this Act, the terms of their consent and the circumstances of the storage and as to such other matters as the Authority may specify in directions shall be included in the records maintained in pursuance of the licence.
- (2) No information shall be removed from any records maintained in pursuance of such a licence before the expiry of such period as may be specified in directions for records of the class in question.
- (3) The statutory storage period in respect of gametes is such period not exceeding ten years as the licence may specify.
- (4) The statutory storage period in respect of embryos is such period not exceeding five years as the licence may specify.
- (5) Regulations may provide that subsection (3) or (4) above shall have effect as if for ten years or, as the case may be, five years there were substituted—
- (a) such shorter period, or
 - (b) in such circumstances as may be specified in the regulations, such longer period,
- as may be specified in the regulations.

Conditions of research licences.

- 15.(1) The following shall be conditions of every licence under paragraph 3 of Schedule 2 to this Act.

- (2) The records maintained in pursuance of the licence shall include such information as the Authority may specify in directions about such matters as the Authority may so specify.
- (3) No information shall be removed from any records maintained in pursuance of the licence before the expiry of such period as may be specified in directions for records of the class in question.
- (4) No embryo appropriated for the purposes of any project of research shall be kept or used otherwise than for the purposes of such a project.

Grant, revocation and suspension of licences

Grant of licence.

- 16.(1) Where application is made to the Authority in a form approved for the purpose by it accompanied by the initial fee, a licence may be granted to any person by a licence committee if the requirements of subsection (2) below are met and any additional fee is paid.
- (2) The requirements mentioned in subsection (1) above are—
 - (a) that the application is for a licence designating an individual as the person under whose supervision the activities to be authorised by the licence are to be carried on,
 - (b) that either that individual is the applicant or—
 - (i) the application is made with the consent of that individual, and
 - (ii) the licence committee is satisfied that the applicant is a suitable person to hold a licence,
 - (c) that the licence committee is satisfied that the character, qualifications and experience of that individual are such as are required for the supervision of the activities and that the individual will discharge the duty under section 17 of this Act,
 - (d) that the licence committee is satisfied that the premises in respect of which the licence is to be granted are suitable for the activities, and
 - (e) that all the other requirements of this Act in relation to the granting of the licence are satisfied.
- (3) The grant of a licence to any person may be by way of renewal of a licence granted to that person, whether on the same or different terms.
- (4) Where the licence committee is of the opinion that the information provided in the application is insufficient to enable it to determine the application, it need not consider the application until the applicant has provided it with such further information as it may require him to provide.
- (5) The licence committee shall not grant a licence unless a copy of the conditions to be imposed by the licence has been shown to, and acknowledged

in writing by, the applicant and (where different) the person under whose supervision the activities are to be carried on.

- (6) In subsection (1) above "initial fee" and "additional fee" mean a fee of such amount as may be fixed from time to time by the Authority with the approval of the Secretary of State and the Treasury, and in determining any such amount, the Authority may have regard to the costs of performing all its functions.
- (7) Different fees may be fixed for different circumstances and fees paid under this section are not repayable.

The person responsible.

- 17.(1) It shall be the duty of the individual under whose supervision the activities authorised by a licence are carried on (referred to in this Act as the "person responsible") to secure—
- (a) that the other persons to whom the licence applies are of such character, and are so qualified by training and experience, as to be suitable persons to participate in the activities authorised by the licence,
 - (b) that proper equipment is used,
 - (c) that proper arrangements are made for the keeping of gametes and embryos and for the disposal of gametes or embryos that have been allowed to perish,
 - (d) that suitable practices are used in the course of the activities, and
 - (e) that the conditions of the licence are complied with.
- (2) References in this Act to the persons to whom a licence applies are to—
- (a) the person responsible,
 - (b) any person designated in the licence, or in a notice given to the Authority by the person who holds the licence or the person responsible, as a person to whom the licence applies, and
 - (c) any person acting under the direction of the person responsible or of any person so designated.
- (3) References below in this Act to the nominal licensee are to a person who holds a licence under which a different person is the person responsible.

Revocation and variation of licence.

- 18.(1) A licence committee may revoke a licence if it is satisfied—
- (a) that any information given for the purposes of the application for the grant of the licence was in any material respect false or misleading,
 - (b) that the premises to which the licence relates are no longer suitable for the activities authorised by the licence,
 - (c) that the person responsible has failed to discharge, or is unable because of

- incapacity to discharge, the duty under section 17 of this Act or has failed to comply with directions given in connection with any licence, or
- (d) that there has been any other material change of circumstances since the licence was granted.
- (2) A licence committee may also revoke a licence if—
- (a) it ceases to be satisfied that the character of the person responsible is such as is required for the supervision of those activities or that the nominal licensee is a suitable person to hold a licence, or
- (b) the person responsible dies or is convicted of an offence under this Act.
- (3) Where a licence committee has power to revoke a licence under subsection (1) above it may instead vary any terms of the licence.
- (4) A licence committee may, on an application by the person responsible or the nominal licensee, vary or revoke a licence.
- (5) A licence committee may, on an application by the nominal licensee, vary the licence so as to designate another individual in place of the person responsible if—
- (a) the committee is satisfied that the character, qualifications and experience of the other individual are such as are required for the supervision of the activities authorised by the licence and that the individual will discharge the duty under section 17 of this Act, and
- (b) the application is made with the consent of the other individual.
- (6) Except on an application under subsection (5) above, a licence can only be varied under this section—
- (a) so far as it relates to the activities authorised by the licence, the manner in which they are conducted or the conditions of the licence, or
- (b) so as to extend or restrict the premises to which the licence relates.

Procedure for refusal, variation or revocation of licence.

- 19.(1) Where a licence committee proposes to refuse a licence or to refuse to vary a licence so as to designate another individual in place of the person responsible, the committee shall give notice of the proposal, the reasons for it and the effect of subsection (3) below to the applicant.
- (2) Where a licence committee proposes to vary or revoke a licence, the committee shall give notice of the proposal, the reasons for it and the effect of subsection (3) below to the person responsible and the nominal licensee (but not to any person who has applied for the variation or revocation).
- (3) If, within the period of twenty-eight days beginning with the day on which notice of the proposal is given, any person to whom notice was given under subsection (1) or (2) above gives notice to the committee of a wish to make to the committee representations about the proposal in any way mentioned in

subsection (4) below, the committee shall, before making its determination, give the person an opportunity to make representations in that way.

(4) The representations may be—

- (a) oral representations made by the person, or another acting on behalf of the person, at a meeting of the committee, and
- (b) written representations made by the person.

(5) A licence committee shall—

- (a) in the case of a determination to grant a licence, give notice of the determination to the person responsible and the nominal licensee,
- (b) in the case of a determination to refuse a licence, or to refuse to vary a licence so as to designate another individual in place of the person responsible, give such notice to the applicant, and
- (c) in the case of a determination to vary or revoke a licence, give such notice to the person responsible and the nominal licensee.

(6) A licence committee giving notice of a determination to refuse a licence or to refuse to vary a licence so as to designate another individual in place of the person responsible, or of a determination to vary or revoke a licence otherwise than on an application by the person responsible or the nominal licensee, shall give in the notice the reasons for its decision.

Appeal to Authority against determinations of licence committee.

20.(1) Where a licence committee determines to refuse a licence or to refuse to vary a licence so as to designate another individual in place of the person responsible, the applicant may appeal to the Authority if notice has been given to the committee and to the Authority before the end of the period of twenty-eight days beginning with the date on which notice of the committee's determination was served on the applicant.

(2) Where a licence committee determines to vary or revoke a licence, any person on whom notice of the determination was served (other than a person who applied for the variation or revocation) may appeal to the Authority if notice has been given to the committee and to the Authority before the end of the period of twenty-eight days beginning with the date on which notice of the committee's determination was served.

(3) An appeal under this section shall be by way of rehearing by the Authority and no member of the Authority who took any part in the proceedings resulting in the determination appealed against shall take any part in the proceedings on appeal.

(4) On the appeal—

- (a) the appellant shall be entitled to appear or be represented,
- (b) the members of the licence committee shall be entitled to appear, or the

- committee shall be entitled to be represented, and
- (c) the Authority shall consider any written representations received from the appellant or any member of the committee and may take into account any matter that could be taken into account by a licence committee, and the Authority may make such determination on the appeal as it thinks fit.
- (5) The Authority shall give notice of its determination to the appellant and, if it is a determination to refuse a licence or to refuse to vary a licence so as to designate another individual in place of the person responsible or a determination to vary or revoke a licence, shall include in the notice the reasons for the decision.
- (6) The functions of the Authority on an appeal under this section cannot be discharged by any committee, member or employee of the Authority and, for the purposes of the appeal, the quorum shall not be less than five.

Appeals to High Court or Court of Session.

21. Where the Authority determines under section 20 of this Act—

- (a) to refuse a licence or to refuse to vary a licence so as to designate another individual in place of the person responsible, or
- (b) to vary or revoke a licence,

any person on whom notice of the determination was served may appeal to the High Court or, in Scotland, the Court of Session on a point of law.

Temporary suspension of licence.

22. (1) Where a licence committee—

- (a) has reasonable grounds to suspect that there are grounds for revoking the licence under section 18 of this Act, and
- (b) is of the opinion that the licence should immediately be suspended,
- it may by notice suspend the licence for such period not exceeding three months as may be specified in the notice.

(2) Notice under subsection (1) above shall be given to the person responsible or, where the person responsible has died or appears to the licence committee to be unable because of incapacity to discharge the duty under section 17 of this Act, to some other person to whom the licence applies or the nominal licensee and a licence committee may, by a further notice to that person, renew or further renew the notice under subsection (1) above for such further period not exceeding three months as may be specified in the renewal notice.

(3) While suspended under this section a licence shall be of no effect, but application may be made under section 18(5) of this Act by the nominal licensee to designate another individual as the person responsible.

Directions and guidance

Directions: general.

- 23.(1) The Authority may from time to time give directions for any purpose for which directions may be given under this Act or directions varying or revoking such directions.
- (2) A person to whom any requirement contained in directions is applicable shall comply with the requirement.
- (3) Anything done by a person in pursuance of directions is to be treated for the purposes of this Act as done in pursuance of a licence.
- (4) Where directions are to be given to a particular person, they shall be given by serving notice of the directions on the person.
- (5) In any other case, directions may be given—
- (a) in respect of any licence (including a licence which has ceased to have effect), by serving notice of the directions on the person who is or was the person responsible or the nominal licensee, or
 - (b) if the directions appear to the Authority to be general directions or it appears to the Authority that it is not practicable to give notice in pursuance of paragraph (a) above, by publishing the directions in such way as, in the opinion of the Authority, is likely to bring the directions to the attention of the persons to whom they are applicable.
- (6) This section does not apply to directions under section 9(4) of this Act.

Directions as to particular matters.

- 24.(1) If, in the case of any information about persons for whom treatment services were provided, the person responsible does not know that any child was born following the treatment, the period specified in directions by virtue of section 13(4) of this Act shall not expire less than 50 years after the information was first recorded.
- (2) In the case of every licence under paragraph 1 of Schedule 2 to this Act, directions shall require information to be recorded and given to the Authority about each of the matters referred to in section 13(2)(a) to (e) of this Act.
- (3) Directions may authorise, in such circumstances and subject to such conditions as may be specified in the directions, the keeping, by or on behalf of a person to whom a licence applies, of gametes or embryos in the course of their carriage to or from any premises.
- (4) Directions may authorise any person to whom a licence applies to receive gametes or embryos from outside the United Kingdom or to send gametes or embryos outside the United Kingdom in such circumstances and subject to such conditions as may be specified in the directions, and directions made by

virtue of this subsection may provide for sections 12 to 14 of this Act to have effect with such modifications as may be specified in the directions.

- (5) A licence committee may from time to time give such directions as are mentioned in subsection (7) below where a licence has been varied or has ceased to have effect (whether by expiry, suspension, revocation or otherwise).
- (6) A licence committee proposing to suspend, revoke or vary a licence may give such directions as are mentioned in subsection (7) below.
- (7) The directions referred to in subsections (5) and (6) above are directions given for the purpose of securing the continued discharge of the duties of the person responsible under the licence concerned ("the old licence"), and such directions may, in particular—
- (a) require anything kept or information held in pursuance of the old licence to be transferred to the Authority or any other person, or
 - (b) provide for the discharge of the duties in question by any individual, being an individual whose character, qualifications and experience are, in the opinion of the committee, such as are required for the supervision of the activities authorised by the old licence, and authorise those activities to be carried on under the supervision of that individual,
- but cannot require any individual to discharge any of those duties unless the individual has consented in writing to do so.
- (8) Directions for the purpose referred to in subsection (7)(a) above shall be given to the person responsible under the old licence or, where that person has died or appears to the licence committee to have become unable because of incapacity to discharge the duties in question, to some other person to whom the old licence applies or applied or to the nominal licensee.
- (9) Directions for the purpose referred to in subsection (7)(b) above shall be given to the individual who under the directions is to discharge the duty.
- (10) Where a person who holds a licence dies, anything done subsequently by an individual which that individual would have been authorised to do if the licence had continued in force shall, until directions are given by virtue of this section, be treated as authorised by a licence.
- (11) Where the Authority proposes to give directions specifying any animal for the purposes of paragraph 1(1)(f) or 3(5) of Schedule 2 to this Act, it shall report the proposal to the Secretary of State; and the directions shall not be given until the Secretary of State has laid a copy of the report before each House of Parliament.

Code of practice.

- 25.(1) The Authority shall maintain a code of practice giving guidance about the proper conduct of activities carried on in pursuance of a licence under this Act

and the proper discharge of the functions of the person responsible and other persons to whom the licence applies.

- (2) The guidance given by the code shall include guidance for those providing treatment services about the account to be taken of the welfare of children who may be born as a result of treatment services (including a child's need for a father), and of other children who may be affected by such births.
- (3) The code may also give guidance about the use of any technique involving the placing of sperm and eggs in a woman.
- (4) The Authority may from time to time revise the whole or any part of the code.
- (5) The Authority shall publish the code as for the time being in force.
- (6) A failure on the part of any person to observe any provision of the code shall not of itself render the person liable to any proceedings, but—
 - (a) a licence committee shall, in considering whether there has been any failure to comply with any conditions of a licence and, in particular, conditions requiring anything to be "proper" or "suitable", take account of any relevant provision of the code, and
 - (b) a licence committee may, in considering, where it has power to do so, whether or not to vary or revoke a licence, take into account any observance of or failure to observe the provisions of the code.

Procedure for approval of code.

- 26.(1) The Authority shall send a draft of the proposed first code of practice under section 25 of this Act to the Secretary of State within twelve months of the commencement of section 5 of this Act.
- (2) If the Authority proposes to revise the code or, if the Secretary of State does not approve a draft of the proposed first code, to submit a further draft, the Authority shall send a draft of the revised code or, as the case may be, a further draft of the proposed first code to the Secretary of State.
- (3) Before preparing any draft, the Authority shall consult such persons as the Secretary of State may require it to consult and such other persons (if any) as it considers appropriate.
- (4) If the Secretary of State approves a draft, he shall lay it before Parliament and, if he does not approve it, he shall give reasons to the Authority.
- (5) A draft approved by the Secretary of State shall come into force in accordance with directions.

Status

Meaning of "mother".

- 27.(1) The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child.
- (2) Subsection (1) above does not apply to any child to the extent that the child is treated by virtue of adoption as not being the child of any person other than the adopter or adopters.
- (3) Subsection (1) above applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or the sperm and eggs.

Meaning of "father".

- 28.(1) This section applies in the case of a child who is being or has been carried by a woman as the result of the placing in her of an embryo or of sperm and eggs or her artificial insemination.
- (2) If—
- (a) at the time of the placing in her of the embryo or the sperm and eggs or of her insemination, the woman was a party to a marriage, and
 - (b) the creation of the embryo carried by her was not brought about with the sperm of the other party to the marriage,
- then, subject to subsection (5) below, the other party to the marriage shall be treated as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs or to her insemination (as the case maybe).
- (3) If no man is treated, by virtue of subsection (2) above, as the father of the child but—
- (a) the embryo or the sperm and eggs were placed in the woman, or she was artificially inseminated, in the course of treatment services provided for her and a man together by a person to whom a licence applies, and
 - (b) the creation of the embryo carried by her was not brought about with the sperm of that man,
- then, subject to subsection (5) below, that man shall be treated as the father of the child.
- (4) Where a person is treated as the father of the child by virtue of subsection (2) or (3) above, no other person is to be treated as the father of the child.
- (5) Subsections (2) and (3) above do not apply—
- (a) in relation to England and Wales and Northern Ireland, to any child who, by virtue of the rules of common law, is treated as the legitimate child of the parties to a marriage,
 - (b) in relation to Scotland, to any child who, by virtue of any enactment or other rule of law, is treated as the child of the parties to a marriage, or

- (c) to any child to the extent that the child is treated by virtue of adoption as not being the child of any person other than the adopter or adopters.
- (6) Where—
- (a) the sperm of a man who had given such consent as is required by paragraph 5 of Schedule 3 to this Act was used for a purpose for which such consent was required, or
 - (b) the sperm of a man, or any embryo the creation of which was brought about with his sperm, was used after his death,
- he is not to be treated as the father of the child.
- (7) The references in subsection (2) above to the parties to a marriage at the time there referred to—
- (a) are to the parties to a marriage subsisting at that time, unless a judicial separation was then in force, but
 - (b) include the parties to a void marriage if either or both of them reasonably believed at that time that the marriage was valid; and for the purposes of this subsection it shall be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the marriage was valid.
- (8) This section applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.
- (9) In subsection (7)(a) above, "judicial separation" includes a legal separation obtained in a country outside the British Islands and recognised in the United Kingdom.

Effect of sections 27 and 28.

- 29.(1) Where by virtue of section 27 or 28 of this Act a person is to be treated as the mother or father of a child, that person is to be treated in law as the mother or, as the case may be, father of the child for all purposes.
- (2) Where by virtue of section 27 or 28 of this Act a person is not to be treated as the mother or father of a child, that person is to be treated in law as not being the mother or, as the case may be, father of the child for any purpose.
- (3) Where subsection (1) or (2) above has effect, references to any relationship between two people in any enactment, deed or other instrument or document (whenever passed or made) are to be read accordingly.
- (4) In relation to England and Wales and Northern Ireland, nothing in the provisions of section 27(1) or 28(2) to (4), read with this section, affects—
- (a) the succession to any dignity or title of honour or renders any person capable of succeeding to or transmitting a right to succeed to any such dignity or title, or
 - (b) the devolution of any property limited (expressly or not) to devolve (as

nearly as the law permits) along with any dignity or title of honour.

(5) In relation to Scotland—

- (a) those provisions do not apply to any title, coat of arms, honour or dignity transmissible on the death of the holder thereof or affect the succession thereto or the devolution thereof, and
- (b) where the terms of any deed provide that any property or interest in property shall devolve along with a title, coat of arms, honour or dignity, nothing in those provisions shall prevent that property or interest from so devolving.

Parental orders in favour of gamete donors.

30.(1) The court may make an order providing for a child to be treated in law as the child of the parties to a marriage (referred to in this section as "the husband" and "the wife") if—

- (a) the child has been carried by a woman other than the wife as the result of the placing in her of an embryo or sperm and eggs or her artificial insemination,
 - (b) the gametes of the husband or the wife, or both, were used to bring about the creation of the embryo, and
 - (c) the conditions in subsections (2) to (7) below are satisfied.
- (2) The husband and the wife must apply for the order within six months of the birth of the child or, in the case of a child born before the coming into force of this Act, within six months of such coming into force.
- (3) At the time of the application and of the making of the order—
- (a) the child's home must be with the husband and the wife, and
 - (b) the husband or the wife, or both of them, must be domiciled in a part of the United Kingdom or in the Channel Islands or the Isle of Man.
- (4) At the time of the making of the order both the husband and the wife must have attained the age of eighteen.
- (5) The court must be satisfied that both the father of the child (including a person who is the father by virtue of section 28 of this Act), where he is not the husband, and the woman who carried the child have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.
- (6) Subsection (5) above does not require the agreement of a person who cannot be found or is incapable of giving agreement and the agreement of the woman who carried the child is ineffective for the purposes of that subsection if given by her less than six weeks after the child's birth.
- (7) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by the husband or

the wife for or in consideration of—

- (a) the making of the order,
- (b) any agreement required by subsection (5) above,
- (c) the handing over of the child to the husband and the wife, or
- (d) the making of any arrangements with a view to the making of the order, unless authorised by the court.

(8) For the purposes of an application under this section—

- (a) in relation to England and Wales, section 92(7) to (10) of, and Part I of Schedule 11 to, the [1989 c. 41.] Children Act 1989 (jurisdiction of courts) shall apply for the purposes of this section to determine the meaning of "the court" as they apply for the purposes of that Act and proceedings on the application shall be "family proceedings" for the purposes of that Act,
- (b) in relation to Scotland, "the court" means the Court of Session or the sheriff court of the sheriffdom within which the child is, and
- (c) in relation to Northern Ireland, "the court" means the High Court or any county court within whose division the child is.

(9) Regulations may provide—

- (a) for any provision of the enactments about adoption to have effect, with such modifications (if any) as may be specified in the regulations, in relation to orders under this section, and applications for such orders, as it has effect in relation to adoption, and applications for adoption orders, and
- (b) for references in any enactment to adoption, an adopted child or an adoptive relationship to be read (respectively) as references to the effect of an order under this section, a child to whom such an order applies and a relationship arising by virtue of the enactments about adoption, as applied by the regulations, and for similar expressions in connection with adoption to be read accordingly,

and the regulations may include such incidental or supplemental provision as appears to the Secretary of State necessary or desirable in consequence of any provision made by virtue of paragraph (a) or (b) above.

(10) In this section "the enactments about adoption" means the [1976 c. 36.] Adoption Act 1976, the [1978 c. 28.] Adoption (Scotland) Act 1978 and the [S.I. 1987/2203 (N.I. 22).] Adoption (Northern Ireland) Order 1987.

(11) Subsection (1)(a) above applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

Information

The Authority's register of information.

- 31.(1) The Authority shall keep a register which shall contain any information obtained by the Authority which falls within subsection (2) below.
- (2) Information falls within this subsection if it relates to—
- (a) the provision of treatment services for any identifiable individual, or
 - (b) the keeping or use of the gametes of any identifiable individual or of an embryo taken from any identifiable woman,
- or if it shows that any identifiable individual was, or may have been, born in consequence of treatment services.
- (3) A person who has attained the age of eighteen ("the applicant") may by notice to the Authority require the Authority to comply with a request under subsection (4) below, and the Authority shall do so if—
- (a) the information contained in the register shows that the applicant was, or may have been, born in consequence of treatment services, and
 - (b) the applicant has been given a suitable opportunity to receive proper counselling about the implications of compliance with the request.
- (4) The applicant may request the Authority to give the applicant notice stating whether or not the information contained in the register shows that a person other than a parent of the applicant would or might, but for sections 27 to 29 of this Act, be a parent of the applicant and, if it does show that—
- (a) giving the applicant so much of that information as relates to the person concerned as the Authority is required by regulations to give (but no other information), or
 - (b) stating whether or not that information shows that, but for sections 27 to 29 of this Act, the applicant, and a person specified in the request as a person whom the applicant proposes to marry, would or might be related.
- (5) Regulations cannot require the Authority to give any information as to the identity of a person whose gametes have been used or from whom an embryo has been taken if a person to whom a licence applied was provided with the information at a time when the Authority could not have been required to give information of the kind in question.
- (6) A person who has not attained the age of eighteen ("the minor") may by notice to the Authority specifying another person ("the intended spouse") as a person whom the minor proposes to marry require the Authority to comply with a request under subsection (7) below, and the Authority shall do so if—
- (a) the information contained in the register shows that the minor was, or may have been, born in consequence of treatment services, and
 - (b) the minor has been given a suitable opportunity to receive proper counselling about the implications of compliance with the request.
- (7) The minor may request the Authority to give the minor notice stating whether or not the information contained in the register shows that, but for

sections 27 to 29 of this Act, the minor and the intended spouse would or might be related.

Information to be provided to Registrar General.

- 32.(1) This section applies where a claim is made before the Registrar General that a man is or is not the father of a child and it is necessary or desirable for the purpose of any function of the Registrar General to determine whether the claim is or may be well-founded.
- (2) The Authority shall comply with any request made by the Registrar General by notice to the Authority to disclose whether any information on the register kept in pursuance of section 31 of this Act tends to show that the man may be the father of the child by virtue of section 28 of this Act and, if it does, disclose that information.
- (3) In this section and section 33 of this Act, "the Registrar General" means the Registrar General for England and Wales, the Registrar General of Births, Deaths and Marriages for Scotland or the Registrar General for Northern Ireland, as the case may be.

Restrictions on disclosure of information.

- 33.(1) No person who is or has been a member or employee of the Authority shall disclose any information mentioned in subsection (2) below which he holds or has held as such a member or employee.
- (2) The information referred to in subsection (1) above is—
- (a) any information contained or required to be contained in the register kept in pursuance of section 31 of this Act, and
 - (b) any other information obtained by any member or employee of the Authority on terms or circumstances requiring it to be held in confidence.
- (3) Subsection (1) above does not apply to any disclosure of information mentioned in subsection (2) (a) above made—
- (a) to a person as a member or employee of the Authority,
 - (b) to a person to whom a licence applies for the purposes of his functions as such,
 - (c) so that no individual to whom the information relates can be identified,
 - (d) in pursuance of an order of a court under section 34 or 35 of this Act,
 - (e) to the Registrar General in pursuance of a request under section 32 of this Act, or
 - (f) in accordance with section 31 of this Act.
- (4) Subsection (1) above does not apply to any disclosure of information mentioned in subsection (2) (b) above—
- (a) made to a person as a member or employee of the Authority,

- (b) made with the consent of the person or persons whose confidence would otherwise be protected, or
 - (c) which has been lawfully made available to the public before the disclosure is made.
- (5) No person who is or has been a person to whom a licence applies and no person to whom directions have been given shall disclose any information falling within section 31(2) of this Act which he holds or has held as such a person.
- (6) Subsection (5) above does not apply to any disclosure of information made—
- (a) to a person as a member or employee of the Authority,
 - (b) to a person to whom a licence applies for the purposes of his functions as such,
 - (c) so far as it identifies a person who, but for sections 27 to 29 of this Act, would or might be a parent of a person who instituted proceedings under section 1A of the [1976 c. 28.] Congenital Disabilities (Civil Liability) Act 1976, but only for the purpose of defending such proceedings, or instituting connected proceedings for compensation against that parent,
 - (d) so that no individual to whom the information relates can be identified, or
 - (e) in pursuance of directions given by virtue of section 24(5) or (6) of this Act.
- (7) This section does not apply to the disclosure to any individual of information which—
- (a) falls within section 31(2) of this Act by virtue of paragraph (a) or (b) of that subsection, and
 - (b) relates only to that individual or, in the case of an individual treated together with another, only to that individual and that other.
- (8) At the end of Part IV of the [1984 c. 35.] Data Protection Act 1984 (Exemptions) there is inserted—
- "Information about human embryos, etc.
- 35A. Personal data consisting of information showing that an identifiable individual was, or may have been, born in consequence of treatment services (within the meaning of the Human Fertilisation and Embryology Act 1990) are exempt from the subject access provisions except so far as their disclosure under those provisions is made in accordance with section 31 of that Act (the Authority's register of information)."

Disclosure in interests of justice.

- 34.(1) Where in any proceedings before a court the question whether a person is or is not the parent of a child by virtue of sections 27 to 29 of this Act falls to

be determined, the court may on the application of any party to the proceedings make an order requiring the Authority—

- (a) to disclose whether or not any information relevant to that question is contained in the register kept in pursuance of section 31 of this Act, and
 - (b) if it is, to disclose so much of it as is specified in the order, but such an order may not require the Authority to disclose any information falling within section 31(2)(b) of this Act.
- (2) The court must not make an order under subsection (1) above unless it is satisfied that the interests of justice require it to do so, taking into account—
- (a) any representations made by any individual who may be affected by the disclosure, and
 - (b) the welfare of the child, if under 18 years old, and of any other person under that age who may be affected by the disclosure.
- (3) If the proceedings before the court are civil proceedings, it—
- (a) may direct that the whole or any part of the proceedings on the application for an order under subsection (2) above shall be heard in camera, and
 - (b) if it makes such an order, may then or later direct that the whole or any part of any later stage of the proceedings shall be heard in camera.
- (4) An application for a direction under subsection (3) above shall be heard in camera unless the court otherwise directs.

Disclosure in interests of justice: congenital disabilities, etc.

- 35.(1) Where for the purpose of instituting proceedings under section 1 of the Congenital Disabilities (Civil Liability) Act 1976 (civil liability to child born disabled) it is necessary to identify a person who would or might be the parent of a child but for sections 27 to 29 of this Act, the court may, on the application of the child, make an order requiring the Authority to disclose any information contained in the register kept in pursuance of section 31 of this Act identifying that person.
- (2) Where, for the purposes of any action for damages in Scotland (including any such action which is likely to be brought) in which the damages claimed consist of or include damages or solatium in respect of personal injury (including any disease and any impairment of physical or mental condition), it is necessary to identify a person who would or might be the parent of a child but for sections 27 to 29 of this Act, the court may, on the application of any party to the action or, if the proceedings have not been commenced, the prospective pursuer, make an order requiring the Authority to disclose any information contained in the register kept in pursuance of section 31 of this Act identifying that person.

- (3) Subsections (2) to (4) of section 34 of this Act apply for the purposes of this section as they apply for the purposes of that.
- (4) After section 4(4) of the Congenital Disabilities (Civil Liability) Act 1976 there is inserted— "(4A) In any case where a child carried by a woman as the result of the placing in her of an embryo or of sperm and eggs or her artificial insemination is born disabled, any reference in section 1 of this Act to a parent includes a reference to a person who would be a parent but for sections 27 to 29 of the Human Fertilisation and Embryology Act 1990."

Surrogacy

Amendment of Surrogacy Arrangements Act 1985.

- 36.(1) After section 1 of the [1985 c. 49.] Surrogacy Arrangements Act 1985 there is inserted—
- "Surrogacy arrangements unenforceable.
- 1A. No surrogacy arrangement is enforceable by or against any of the persons making it."
- (2) In section 1 of that Act (meaning of "surrogate mother", etc.)—
- (a) in subsection (6), for "or, as the case may be, embryo insertion" there is substituted "or of the placing in her of an embryo, of an egg in the process of fertilisation or of sperm and eggs, as the case may be," and
- (b) in subsection (9), the words from "and whether" to the end are repealed.

Abortion

Amendment of law relating to termination of pregnancy.

- 37.(1) For paragraphs (a) and (b) of section 1(1) of the [1967 c. 87.] Abortion Act 1967 (grounds for medical termination of pregnancy) there is substituted—
- "
- (a) that the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or
- (b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
- (c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or
- (d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped."
- (2) In section 1(2) of that Act, after "(a)" there is inserted "or (b)".

- (3) After section 1(3) of that Act there is inserted— "(3A) The power under subsection (3) of this section to approve a place includes power, in relation to treatment consisting primarily in the use of such medicines as may be specified in the approval and carried out in such manner as may be so specified, to approve a class of places."
- (4) For section 5(1) of that Act (effect on [1929 c. 34.] Infant Life (Preservation) Act 1929) there is substituted— "(1) No offence under the Infant Life (Preservation) Act 1929 shall be committed by a registered medical practitioner who terminates a pregnancy in accordance with the provisions of this Act."
- (5) In section 5(2) of that Act, for the words from "the miscarriage" to the end there is substituted "a woman's miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorised by section 1 of this Act and, in the case of a woman carrying more than one foetus, anything done with intent to procure her miscarriage of any foetus is authorised by that section if—
- (a) the ground for termination of the pregnancy specified in subsection (1) (d) of that section applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus, or
 - (b) any of the other grounds for termination of the pregnancy specified in that section applies"

Conscientious objection

Conscientious objection.

- 38.(1) No person who has a conscientious objection to participating in any activity governed by this Act shall be under any duty, however arising, to do so.
- (2) In any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.
- (3) In any proceedings before a court in Scotland, a statement on oath by any person to the effect that he has a conscientious objection to participating in a particular activity governed by this Act shall be sufficient evidence of that fact for the purpose of discharging the burden of proof imposed by subsection (2) above.

Enforcement

Powers of members and employees of Authority.

- 39.(1) Any member or employee of the Authority entering and inspecting premises to which a licence relates may—

- (a) take possession of anything which he has reasonable grounds to believe may be required—
 - (i) for the purpose of the functions of the Authority relating to the grant, variation, suspension and revocation of licences, or
 - (ii) for the purpose of being used in evidence in any proceedings for an offence under this Act,and retain it for so long as it may be required for the purpose in question, and
 - (b) for the purpose in question, take such steps as appear to be necessary for preserving any such thing or preventing interference with it, including requiring any person having the power to do so to give such assistance as may reasonably be required.
- (2) In subsection (1) above—
- (a) the references to things include information recorded in any form, and
 - (b) the reference to taking possession of anything includes, in the case of information recorded otherwise than in legible form, requiring any person having the power to do so to produce a copy of the information in legible form and taking possession of the copy.
- (3) Nothing in this Act makes it unlawful for a member or employee of the Authority to keep any embryo or gametes in pursuance of that person's functions as such.

Power to enter premises.

- 40.(1) A justice of the peace (including, in Scotland, a sheriff) may issue a warrant under this section if satisfied by the evidence on oath of a member or employee of the Authority that there are reasonable grounds for suspecting that an offence under this Act is being, or has been, committed on any premises.
- (2) A warrant under this section shall authorise any named member or employee of the Authority (who must, if so required, produce a document identifying himself), together with any constables—
- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose, and
 - (b) to search the premises and—
 - (i) take possession of anything which he has reasonable grounds to believe may be required to be used in evidence in any proceedings for an offence under this Act, or
 - (ii) take such steps as appear to be necessary for preserving any such thing or preventing interference with it, including requiring any person having the power to do so to give such assistance as may reasonably be required.

- (3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (4) Anything of which possession is taken under this section may be retained—
 - (a) for a period of six months, or
 - (b) if within that period proceedings to which the thing is relevant are commenced against any person for an offence under this Act, until the conclusion of those proceedings.
- (5) In this section—
 - (a) the references to things include information recorded in any form, and
 - (b) the reference in subsection (2)(b)(i) above to taking possession of anything includes, in the case of information recorded otherwise than in legible form, requiring any person having the power to do so to produce a copy of the information in legible form and taking possession of the copy.

Offences

Offences.

- 41.(1) A person who—
 - (a) contravenes section 3(2) or 4(1)(c) of this Act, or
 - (b) does anything which, by virtue of section 3(3) of this Act, cannot be authorised by a licence,is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding ten years or a fine or both.
- (2) A person who—
 - (a) contravenes section 3(1) of this Act, otherwise than by doing something which, by virtue of section 3(3) of this Act, cannot be authorised by a licence,
 - (b) keeps or uses any gametes in contravention of section 4(1)(a) or (b) of this Act,
 - (c) contravenes section 4(3) of this Act, or
 - (d) fails to comply with any directions given by virtue of section 24(7)(a) of this Act,is guilty of an offence.
- (3) If a person—
 - (a) provides any information for the purposes of the grant of a licence, being information which is false or misleading in a material particular, and
 - (b) either he knows the information to be false or misleading in a material particular or he provides the information recklessly,he is guilty of an offence.
- (4) A person guilty of an offence under subsection (2) or (3) above is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, and
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (5) A person who discloses any information in contravention of section 33 of this Act is guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, and
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (6) A person who—
- (a) fails to comply with a requirement made by virtue of section 39(1)(b) or (2)(b) or 40(2)(b)(ii) or (5)(b) of this Act, or
 - (b) intentionally obstructs the exercise of any rights conferred by a warrant issued under section 40 of this Act,
- is guilty of an offence.
- (7) A person who without reasonable excuse fails to comply with a requirement imposed by regulations made by virtue of section 10(2)(a) of this Act is guilty of an offence.
- (8) Where a person to whom a licence applies or the nominal licensee gives or receives any money or other benefit, not authorised by directions, in respect of any supply of gametes or embryos, he is guilty of an offence.
- (9) A person guilty of an offence under subsection (6), (7) or (8) above is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level five on the standard scale or both.
- (10) It is a defence for a person ("the defendant") charged with an offence of doing anything which, under section 3(1) or 4(1) of this Act, cannot be done except in pursuance of a licence to prove—
- (a) that the defendant was acting under the direction of another, and
 - (b) that the defendant believed on reasonable grounds—
 - (i) that the other person was at the material time the person responsible under a licence, a person designated by virtue of section 17(2)(b) of this Act as a person to whom a licence applied, or a person to whom directions had been given by virtue of section 24(9) of this Act, and
 - (ii) that the defendant was authorised by virtue of the licence or directions to do the thing in question.
- (11) It is a defence for a person charged with an offence under this Act to prove—
- (a) that at the material time he was a person to whom a licence applied or to whom directions had been given, and

- (b) that he took all such steps as were reasonable and exercised all due diligence to avoid committing the offence.

Consent to prosecution.

42. No proceedings for an offence under this Act shall be instituted—

- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions, and
- (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

Miscellaneous and General

Keeping and examining gametes and embryos in connection with crime, etc.

43.(1) Regulations may provide—

- (a) for the keeping and examination of gametes or embryos, in such manner and on such conditions (if any) as may be specified in regulations, in connection with the investigation of, or proceedings for, an offence (wherever committed), or
 - (b) for the storage of gametes, in such manner and on such conditions (if any) as may be specified in regulations, where they are to be used only for such purposes, other than treatment services, as may be specified in regulations.
- (2) Nothing in this Act makes unlawful the keeping or examination of any gametes or embryos in pursuance of regulations made by virtue of this section.
- (3) In this section "examination" includes use for the purposes of any test.

Civil liability to child with disability.

44.(1) After section 1 of the [1976 c. 28.] Congenital Disabilities (Civil Liability) Act 1976 (civil liability to child born disabled) there is inserted—

"Extension of section 1 to cover infertility treatments.

1A. (1) In any case where—

- (a) a child carried by a woman as the result of the placing in her of an embryo or of sperm and eggs or her artificial insemination is born disabled,
- (b) the disability results from an act or omission in the course of the selection, or the keeping or use outside the body, of the embryo carried by her or of the gametes used to bring about the creation of the embryo, and
- (c) a person is under this section answerable to the child in respect of

- the act or omission,
the child's disabilities are to be regarded as damage resulting from the wrongful act of that person and actionable accordingly at the suit of the child.
- (2) Subject to subsection (3) below and the applied provisions of section 1 of this Act, a person (here referred to as "the defendant") is answerable to the child if he was liable in tort to one or both of the parents (here referred to as "the parent or parentsconcerned") or would, if sued in due time, have been so; and it is no answer that there could not have been such liability because the parent or parents concerned suffered no actionable injury, if there was a breach of legal duty which, accompanied by injury,wouldhavegiven rise to the liability.
- (3) The defendant is not under this section answerable to the child if at the time the embryo, or the sperm and eggs, are placed in the woman or the time of her insemination (as the case may be) either or both of the parents knew the risk of their child being born disabled (that is to say, the particular risk created by the act or omission).
- (4) Subsections (5) to (7) of section 1 of this Act apply for the purposes of thissection as they apply for the purposes of that but as ifreference to the parent or the parent affected were references to the parent or parents concerned."
- (2) In section 4 of that Act (interpretation, etc)—
- (a) at the end of subsection (2) there is inserted— "and references to embryos shall be construed in accordance with section 1 of the Human Fertilisation and Embryology Act 1990" ,
- (b) in subsection (3), after "section 1" there is inserted "1A", and
- (c) in subsection (4), for "either" there is substituted "any".

Regulations.

- 45.(1) The Secretary of State may make regulations for any purpose for which regulationsmaybemadeunderthisAct.
- (2) The power to make regulations shall be exercisable by statutory instrument.
- (3) Regulations may make different provision for differentcases.
- (4) The Secretary of State shall not make regulations by virtue of section 3(3) (c), 4(2) or (3), 30, 31(4)(a), or 43 of this Act or paragraph 1(1)(g) or 3 of Schedule 2 to this Act unless a draft has been laid before and approved by resolution of each House of Parliament.
- (5) A statutory instrument containing regulations shall, if made without a draft having been approved by resolution of each House of Parliament, be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In this Act "regulations" means regulations under this section.

Notices.

- 46.(1) This section has effect in relation to any notice required or authorised by this Act to be given to or served on any person.
- (2) The notice may be given to or served on the person—
- (a) by delivering it to the person,
 - (b) by leaving it at the person's proper address, or
 - (c) by sending it by post to the person at that address.
- (3) The notice may—
- (a) in the case of a body corporate, be given to or served on the secretary or clerk of the body,
 - (b) in the case of a partnership, be given to or served on any partner, and
 - (c) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of the association.
- (4) For the purposes of this section and section 7 of the [1978 c. 30.] Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person is the person's last known address and also—
- (a) in the case of a body corporate, its secretary or its clerk, the address of its registered or principal office, and
 - (b) in the case of an unincorporated association or a member of its governing body, its principal office.
- (5) Where a person has notified the Authority of an address or a new address at which notices may be given to or served on him under this Act, that address shall also be his proper address for the purposes mentioned in subsection (4) above or, as the case may be, his proper address for those purposes in substitution for that previously notified.

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47. The expressions listed in the left-hand column below are respectively defined or (as the case may be) are to be interpreted in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

Activities governed by this Act	Section 4(5)
Authority	Section 2(1)
Carry, in relation to a child	Section 2(3)
Directions	Section 2(1)
Embryo	Section 1
Gametes, eggs or sperm	Section 1
Keeping, in relation to embryos or gametes	Section 2(2)

Licence Section 2(1)

Licence committee Section 9(1)

Nominal licensee Section 17(3)

Person responsible Section 17(1)

Person to whom a licence applies Section 17(2)

Statutory storage period Section 14(3) to (5)

Store, and similar expressions, in relation to embryos or gametes Section 2(2)

Treatment services Section 2(1)

Northern Ireland.

48.(1) This Act (except section 37) extends to Northern Ireland.

(2) Subject to any Order made after the passing of this Act by virtue of subsection (1)(a) of section 3 of the [1973 c. 36.] Northern Ireland Constitution Act 1973, the activities governed by this Act shall not be transferred matters for the purposes of that Act, but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.

Short title, commencement, etc.

49.(1) This Act may be cited as the Human Fertilisation and Embryology Act 1990.

(2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be appointed for different provisions and for different purposes.

(3) Sections 27 to 29 of this Act shall have effect only in relation to children carried by women as a result of the placing in them of embryos or of sperm and eggs, or of their artificial insemination (as the case may be), after the commencement of those sections.

(4) Section 27 of the [1987 c. 42.] Family Law Reform Act 1987 (artificial insemination) does not have effect in relation to children carried by women as the result of their artificial insemination after the commencement of sections 27 to 29 of this Act.

(5) Schedule 4 to this Act (which makes minor and consequential amendments) shall have effect.

(6) An order under this section may make such transitional provision as the Secretary of State considers necessary or desirable and, in particular, may provide that where activities are carried on under the supervision of a particular individual, being activities which are carried on under the supervision of that individual at the commencement of sections 3 and 4 of this Act, those activities are to be treated, during such period as may be specified

in or determined in accordance with the order, as authorised by a licence (having, in addition to the conditions required by this Act, such conditions as may be so specified or determined) under which that individual is the person responsible.

(7) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend, with such exceptions, adaptations and modifications (if any) as may be specified in the Order, to any of the Channel Islands.