

These notes refer to the Human Fertilisation and Embryology (Deceased Fathers) Act 2003 (c.24) which received Royal Assent on 18 September 2003

HUMAN FERTILISATION AND EMBRYOLOGY (DECEASED FATHERS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 3: Retrospective, transitional and transitory provision

19. *Subsection (1)* ensures that the Act will apply to existing, as well as future, cases. The result is that the conditions mentioned in the new section 28(5A), (5B), (5C) or (5D) can be satisfied in any case where the sperm or embryo in question was used on or after 1 August 1991.
20. *Subsection (2) to (5)* provide that, where a child was born before the coming into force of the relevant provision in the Act, the mother may elect in writing not later than the end of the period of six months beginning with the coming force of that provision for her deceased husband or partner to be treated as the father of the child for the purpose mentioned in the new section 28(5I). This will give women who wish to take advantage of the provisions of the Act time to gather evidence in support of their election in circumstances where their treatment may have taken place many years ago.
21. *Subsection (6)* applies to cases where the man who the woman elects in writing to be treated as the father of the child died before the Act received Royal Assent. In respect of new subsections 28(5A) and (5B) it removes the requirement that the man consented in writing (and did not withdraw his consent) to the use of his sperm after his death or (as the case may be) to the placing in the woman of an embryo created using his sperm before his death, and to being treated for the purpose mentioned in subsection (5I) as the father of any resulting child. In respect of new subsections 28(5C) and (5D) it removes the requirement that the man consented in writing (and did not withdraw his consent) to the placing in the woman of the embryo after his death, and to being treated for the purpose mentioned in subsection (5I) as the father of any resulting child.