

# **HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: Amendments of Human Fertilisation and Embryology Act 1990**

##### ***Section 14: Conditions of licences for treatment***

113. This section amends section 13 of the 1990 Act which relates to conditions of licences for treatment.

##### **Embryo testing**

114. **Section 14(4)** contains a provision that relates to the provisions on embryo testing (see note on section 11). New sections 13(8) to (11) amend the 1990 Act to make it a condition of a treatment licence that embryos that are known to have an abnormality (including a gender-related abnormality) are not to be preferred to embryos not known to have such an abnormality. The same restriction is also applied to the selection of persons as gamete or embryo donors. This would prevent assisted reproduction technology being used to select an embryo with a view to increasing the chance of giving birth to a child that had or would develop a serious medical condition, or to select a donor to increase the chance of a child having a serious medical condition.

##### **Welfare of the Child**

115. Section 13(5) of the 1990 Act requires that:
- “A woman shall not be provided with treatment services, other than basic partner 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.
116. The HFEA is required by section 25(2) of the 1990 Act to provide guidance on this duty, and does so in its Code of Practice to licence holders.
117. Section 14(2)(b) of the Act amends the reference to a child’s need for a father so that the licence condition to be imposed under section 13(5) of the 1990 Act will refer instead to the child’s need for “supportive parenting”. Section 23 makes the same amendment to section 25(2) which concerns the guidance to be given about that licence condition. Section 13(5) as amended will therefore require licence holders, before providing treatment services, to consider the welfare of a child who may be born as a result of the treatment (including the need of that child for supportive parenting) and the welfare of any other child who may be affected by the birth. This will continue to be a matter on which the HFEA must provide guidance.

118. **Section 14(6)** makes transitional arrangements so that licences which are in force at the date of commencement of the amendment made by section 14(2)(b) will have effect as if they include the condition relating to consideration of welfare.

### **Welfare of the child where basic partner treatment services are provided**

119. Basic partner treatment services are treatment services that are provided for a woman and a man together, without using donated gametes, gametes that have been stored, or embryos created outside the woman's body. These include artificial insemination (intrauterine insemination, IUI) using sperm that has been processed but not donated or frozen. These services were brought within the HFEA's remit by the 2007 Regulations.
120. **Section 14(2)(a)** applies the requirement to take account of the welfare of the child where basic partner treatment services are provided in the same way that the requirement applies to other treatment services regulated under the 1990 Act.

### **Requirement to offer counselling**

121. **Section 14(3)** and Schedule 4 to the Act extend the existing requirements under the 1990 Act as to the provision of counselling by fertility clinics. Under section 13(6) of the 1990 Act, it is a requirement of all licences for treatment issued by the HFEA that a woman may not be provided with any treatment services involving donated gametes or embryos, or the use of an embryo which has been created *in vitro*, unless she and any man with whom she is being treated have been provided with relevant information and offered counselling. The new provision will extend this requirement to same sex couples. In addition, it will ensure that, before proceeding with embryo transfer or DI, clinics are required to offer counselling and provide relevant information to couples who have given notice that they consent to the intended mother's partner being treated as the parent of a child who is conceived using donor sperm. Where such notices have been given, but if one of the partners subsequently withdraws their consent, clinics will be required to notify the other partner of this.
122. The substituted section 13(6) requires that any woman receiving treatment of certain kinds, and any partner of that woman who is receiving treatment with her, must be given a suitable opportunity to receive counselling and must be provided with relevant information *before* treatment is provided. The new section 13(6A) requires a suitable offer of counselling to be given and relevant information to be provided before treatment is provided in a case where two people consent to the parenthood of any child that may be born as a result of that treatment.
123. New section 13(6B) applies the new concepts of "agreed fatherhood conditions" and "agreed female parenthood conditions" to subsection (6A) as provided for under sections 35 and 42 of the Act.
124. New section 13(6C) provides that where the treatment services provided involve the use of donated gametes, or embryos taken from a woman not receiving services, the information provided under subsection (6) and (6A) must include such information as is proper about –
- the importance of informing any resulting child at an early age that the child was donor conceived; and
  - suitable methods of informing the child about their conception.
125. The new sections 13(6D) and (6E) provide that where either partner withdraws consent to agreed fatherhood or parenthood, the person responsible (as defined by section 17(1) of the 1990 Act) must notify the other partner. This also applies where the woman being treated withdraws her consent for the other partner to be the parent of any resulting child. Where the male or female partner of the woman receiving treatment withdraws his or her consent, the person responsible must not place any embryo, sperm or eggs in the woman until she has been notified of the withdrawal of consent.

*These notes refer to the Human Fertilisation and Embryology Act  
2008 (c.22) which received Royal Assent on 13 November 2008*

126. [Schedule 4](#) to the Act inserts a new Schedule 3ZA into the 1990 Act. Part 1 specifies treatment involving the use of donated gametes or embryos taken from a woman not receiving services and the use of embryos created *in vitro* as the kinds of treatment in relation to which clinics must offer counselling in accordance with licence conditions imposed under section 13(6). Part 2 defines the events in connection with which counselling must be offered in accordance with licence conditions imposed under section 13(6A) – that is, the giving of notices of consent to parenthood. These provisions take account of the new provisions about parenthood in Part 2 of the Act.