AMENDMENTS OF THE HUMAN FERTILISATION AND EMBRYOLOGY ACT 1990

Information

25 Restrictions on disclosure of information

For section 33 of the 1990 Act (restrictions on disclosure of information) substitute—

“33A Disclosure of information

(1) No person shall disclose any information falling within section 31(2) which the person obtained (whether before or after the coming into force of section 24 of the Human Fertilisation and Embryology Act 2008) in the person's capacity as—

(a) a member or employee of the Authority,
(b) any person exercising functions of the Authority by virtue of section 8B or 8C of this Act (including a person exercising such functions by virtue of either of those sections as a member of staff or as an employee),
(c) any person engaged by the Authority to provide services to the Authority,
(d) any person employed by, or engaged to provide services to, a person mentioned in paragraph (c),
(e) a person to whom a licence applies,
(f) a person to whom a third party agreement applies, or
(g) a person to whom directions have been given.

(2) Subsection (1) does not apply where—
(a) the disclosure is made to a person as a member or employee of the Authority or as a person exercising functions of the Authority as mentioned in subsection (1)(b),
(b) the disclosure is made to or by a person falling within subsection (1) for the purpose of the provision of services which that person is engaged to provide to the Authority,
(c) the disclosure is made by a person mentioned in subsection (1)(d) for the purpose of enabling a person falling within subsection (1)(c) to provide services which that person is engaged to provide to the Authority,
(d) the disclosure is made to a person to whom a licence applies for the purpose of that person's functions as such,
(e) the disclosure is made to a person to whom a third party agreement applies for the purpose of that person's functions under that agreement,
(f) the disclosure is made in pursuance of directions given by virtue of section 24,
(g) the disclosure is made so that no individual can be identified from the information,
(h) the disclosure is of information other than identifying donor information and is made with the consent required by section 33B,
(i) the disclosure—
(i) is made by a person who is satisfied that it is necessary to make the disclosure to avert an imminent danger to the health of an individual ("P"),
(ii) is of information falling within section 31(2)(a) which could be disclosed by virtue of paragraph (h) with P's consent or could be disclosed to P by virtue of subsection (5), and
(iii) is made in circumstances where it is not reasonably practicable to obtain P's consent,
(j) the disclosure is of information which has been lawfully made available to the public before the disclosure is made,
(k) the disclosure is made in accordance with sections 31ZA to 31ZE,
(l) the disclosure is required or authorised to be made—
(i) under regulations made under section 33D, or
(ii) in relation to any time before the coming into force of the first regulations under that section, under regulations made under section 251 of the National Health Service Act 2006,
(m) the disclosure is made by a person acting in the capacity mentioned in subsection (1)(a) or (b) for the purpose of carrying out the Authority's duties under section 8A,
(n) the disclosure is made by a person acting in the capacity mentioned in subsection (1)(a) or (b) in pursuance of an order of a court under section 34 or 35,
(o) the disclosure is made by a person acting in the capacity mentioned in subsection (1)(a) or (b) to the Registrar General in pursuance of a request under section 32,
(p) the disclosure is made by a person acting in the capacity mentioned in subsection (1)(a) or (b) to any body or person discharging a regulatory
function for the purpose of assisting that body or person to carry out that function,

(q) the disclosure is made for the purpose of establishing in any proceedings relating to an application for an order under subsection (1) of section 54 of the Human Fertilisation and Embryology Act 2008 whether the condition specified in paragraph (a) or (b) of that subsection is met,

(r) the disclosure is made under section 3 of the Access to Health Records Act 1990,

(s) the disclosure is made under Article 5 of the Access to Health Records (Northern Ireland) Order 1993, or

(t) the disclosure is made necessarily for—
   (i) the purpose of the investigation of any offence (or suspected offence), or
   (ii) any purpose preliminary to proceedings, or for the purposes of, or in connection with, any proceedings.

(3) Subsection (1) does not apply to the disclosure of information in so far as—

(a) the information identifies a person who, but for sections 27 to 29 of this Act or sections 33 to 47 of the Human Fertilisation and Embryology Act 2008, would or might be a parent of a person who instituted proceedings under section 1A of the Congenital Disabilities (Civil Liability) Act 1976, and

(b) the disclosure is made for the purpose of defending such proceedings, or instituting connected proceedings for compensation against that parent.

(4) Paragraph (t) of subsection (2), so far as relating to disclosure for the purpose of the investigation of an offence or suspected offence, or for any purpose preliminary to, or in connection with proceedings, does not apply—

(a) to disclosure of identifying donor information, or

(b) to disclosure, in circumstances in which subsection (1) of section 34 of this Act applies, of information relevant to the determination of the question mentioned in that subsection, made by any person acting in a capacity mentioned in any of paragraphs (c) to (g) of subsection (1).

(5) Subsection (1) does not apply to the disclosure to any individual of information which—

(a) falls within subsection (2) of section 31 of this Act by virtue of any of paragraphs (a) to (e) of that subsection, and

(b) relates only to that individual or, in the case of an individual who is treated together with, or gives a notice under section 37 or 44 of the Human Fertilisation and Embryology Act 2008 in respect of, another, only to that individual and that other.

(6) In subsection (2)—

(a) in paragraph (p) “regulatory function” has the same meaning as in section 32 of the Legislative and Regulatory Reform Act 2006, and

(b) in paragraph (t) references to “proceedings” include any formal procedure for dealing with a complaint.
(7) In this section “identifying donor information” means information enabling a person to be identified as a person whose gametes were used in accordance with consent given under paragraph 5 of Schedule 3 for the purposes of treatment services or non-medical fertility services in consequence of which an identifiable individual was, or may have been, born.

33B Consent required to authorise certain disclosures

(1) This section has effect for the purposes of section 33A(2)(h).

(2) Subject to subsection (5), the consent required by this section is the consent of each individual who can be identified from the information.

(3) Consent in respect of a person who has not attained the age of 18 years (“C”) may be given—
   (a) by C, in a case where C is competent to deal with the issue of consent, or
   (b) by a person having parental responsibility for C, in any other case.

(4) Consent to disclosure given at the request of another shall be disregarded unless, before it is given, the person requesting it takes reasonable steps to explain to the individual from whom it is requested the implications of compliance with the request.

(5) In the case of information which shows that any identifiable individual (“A”) was, or may have been, born in consequence of treatment services, the consent required by this section does not include A's consent if the disclosure is necessarily incidental to the disclosure of information falling within section 31(2)(a).

(6) The reference in subsection (3) to parental responsibility is—
   (a) in relation to England and Wales, to be read in accordance with the Children Act 1989;
   (b) in relation to Northern Ireland, to be read in accordance with the Children (Northern Ireland) Order 1995;
   (c) in relation to Scotland, to be read as a reference to parental responsibilities and parental rights within the meaning of the Children (Scotland) Act 1995.

33C Power to provide for additional exceptions from section 33A(1)

(1) Regulations may provide for additional exceptions from section 33A(1).

(2) No exception may be made under this section for—
   (a) disclosure of a kind mentioned in paragraph (a) or (b) of subsection (4) of section 33A, or
   (b) disclosure in circumstances in which section 32 of this Act applies of information having the tendency mentioned in subsection (2) of that section, made by any person acting in a capacity mentioned in any of paragraphs (c) to (g) of subsection (1) of section 33A.
33D Disclosure for the purposes of medical or other research

(1) Regulations may—

(a) make such provision for and in connection with requiring or regulating the processing of protected information for the purposes of medical research as the Secretary of State considers is necessary or expedient in the public interest or in the interests of improving patient care, and

(b) make such provision for and in connection with requiring or regulating the processing of protected information for the purposes of any other research as the Secretary of State considers is necessary or expedient in the public interest.

(2) Regulations under subsection (1) may, in particular, make provision—

(a) for requiring or authorising the disclosure or other processing of protected information to or by persons of any prescribed description subject to compliance with any prescribed conditions (including conditions requiring prescribed undertakings to be obtained from such persons as to the processing of such information),

(b) for securing that, where prescribed protected information is processed by a person in accordance with the regulations, anything done by that person in so processing the information must be taken to be lawfully done despite any obligation of confidence owed by the person in respect of it,

(c) for requiring fees of a prescribed amount to be paid to the Authority in prescribed circumstances by persons in relation to the disclosure to those persons of protected information under those regulations,

(d) for the establishment of one or more bodies to exercise prescribed functions in relation to the processing of protected information under those regulations,

(e) as to the membership and proceedings of any such body, and

(f) as to the payment of remuneration and allowances to any member of any such body and the reimbursement of expenses.

(3) Where regulations under subsection (1) require or regulate the processing of protected information for the purposes of medical research, such regulations may enable any approval given under regulations made under section 251 of the National Health Service Act 2006 (control of patient information) to have effect for the purposes of the regulations under subsection (1) in their application to England and Wales.

(4) Subsections (1) to (3) are subject to subsections (5) to (8).

(5) Regulations under subsection (1) may not make any provision requiring or authorising the disclosure or other processing, for any purpose, of protected information, where that information is information from which an individual may be identified, if it would be reasonably practicable to achieve that purpose otherwise than pursuant to such regulations, having regard to the cost of and technology available for achieving that purpose.

(6) Regulations under this section may not make provision for or in connection with the processing of protected information in a manner inconsistent with any provision made by or under the Data Protection Act 1998.
(7) Subsection (6) does not affect the operation of provisions made under subsection (2)(b).

(8) Before making any regulations under this section the Secretary of State shall consult such bodies appearing to the Secretary of State to represent the interests of those likely to be affected by the regulations as the Secretary of State considers appropriate.

(9) In this section—

“prescribed” means prescribed by regulations made by virtue of this section,

“processing”, in relation to information, means the use, disclosure, or obtaining of the information or the doing of such other things in relation to it as may be prescribed for the purposes of this definition, and

“protected information” means information falling within section 31(2).”

Annotations:

Commencement Information

S. 25 wholly in force at 6.4.2010; s. 25 not in force at Royal Assent see s. 68; s. 25 in force for certain purposes at 6.4.2009 by S.I. 2009/479, art. 5(e)(h) (with Sch.); s. 25 in force at 1.10.2009 for certain further purposes by S.I. 2009/2232, art. 2(I) (with art. 4); s. 25 in force at 6.4.2010 otherwise by S.I. 2010/987, art. 2(a)
Changes to legislation:
There are currently no known outstanding effects for the Human Fertilisation and Embryology Act 2008, Section 25.