
STATUTORY INSTRUMENTS

1991 No. 1400 (C.38)

HUMAN FERTILISATION AND EMBRYOLOGY

The Human Fertilisation and Embryology Act 1990
(Commencement No. 3 and Transitional Provisions) Order 1991

Made - - - - 16th June 1991

In exercise of powers conferred by section 49(2) and (6) of the Human Fertilisation and Embryology Act 1990(1) and of all other powers enabling me in that behalf, I hereby make the following Order:

PART I

General

Citation and interpretation

1. –

(1) This Order may be cited as the Human Fertilisation and Embryology Act 1990 (Commencement No. 3 and Transitional Provisions) Order 1991.

(2) In this Order–

“the Act” means the Human Fertilisation and Embryology Act 1990, and

“the appointed day” means 1st August 1991.

PART II

Appointed Day

Appointed day

2. –

(1) 8th July 1991 is the day appointed for the coming into force of the following provisions of the Act–

- (a) sections 9(5) (composition of licence committees), 10 (licensing procedure) and 14(5) (alteration of statutory storage period) for the purpose of making the regulations there referred to,
- (b) section 16(1) (grant of licence) for the purpose of requiring that an application for a licence be made in an approved form and be accompanied by the initial fee,
- (c) section 16(6) (meaning of certain terms used in section 16(1)) for the purpose of fixing the amount of the initial fee,
- (d) section 43(1) (offence of supplying false information in connection with licence application),
- (e) section 41(4) (penalties) so far as it relates to section 41(3),
- (f) section 43(1) (keeping and examining gametes and embryos in connection with crime, etc.) for the purpose of making the regulations there referred to,
- (g) section 45 (regulations), and
- (h) section 48(1) (extent) so far as it relates to those provisions.

(2) 1st August 1991 is the day appointed for the coming into force of all the provisions of the Act which are not already in force on that date, except section 30 (parental orders in favour of gamete donors) and section 48(1) (extent) so far as it relates to section 30.

PART III

Transitional Provisions

Continuation of activities carried on before appointed day

3. –

(1) Subject to the provisions of this article, any activity governed by the Act which is being carried on immediately before the appointed day under the supervision of a particular individual, and which could be authorised by a licence, shall be treated during the transitional period as authorised by a licence (having the conditions required by the Act and such other conditions as the Authority⁽²⁾ may from time to time specify) under which that individual is the person responsible, and in relation to any activity so authorised the Act (including in particular references in the Act to a licence) shall have effect accordingly.

(2) Paragraph (1) above does not apply to any activity carried on under the supervision of any individual unless—

- (a) by the appointed day an application has been made to the Authority in accordance with section 16(1) of the Act for a licence authorising the carrying on of that activity,
- (b) the application is for a licence designating that individual as the person under whose supervision the activities to be authorised by the licence are to be carried on, and either that individual is the applicant or the application is made with the consent of that individual, and
- (c) in the case of an activity which (apart from paragraph (1) above) would require a licence under paragraph 3 of Schedule 2 to the Act, the individual had immediately before the appointed day a licence to carry it on from the body known as the Interim Licensing Authority for Human In Vitro Fertilisation and Embryology.

(2) The “Authority” is the Human Fertilisation and Embryology Authority established under section 5 of the Act on 7th November 1990 (S.I. 1990/2165).

(3) For the purposes of paragraph (1) above, references in the Act to a person who holds a licence shall be construed during the transitional period as including references to a person who has applied for a licence by the appointed day in accordance with paragraph (2) above, and the Act (including in particular references to the nominal licensee) shall have effect accordingly.

(4) An activity may be carried on by virtue of paragraph (1) above only on the premises in respect of which the application for a licence referred to in paragraph (2) above has been made.

(5) In this article, “the transitional period” in relation to any activity carried on under paragraph (1) above means the period beginning with the appointed day, and ending either one year later or (if sooner) on the date when the application for a licence referred to in paragraph (2) above is finally determined.

Gametes and embryos already in storage on appointed day

4. –

(1) This article has effect in relation to gametes and embryos in storage immediately before the appointed day, and such gametes and embryos are referred to in this Article as “relevant” gametes and embryos.

(2) The statutory storage period for relevant gametes and embryos shall begin on the appointed day.

(3) In relation to the use or storage of any relevant gametes or embryo, the Act shall have effect as if–

- (a) for the condition specified in section 12(c) of the Act there were substituted the condition that the provisions of paragraph (4) below shall be complied with,
- (b) in section 13(3) of the Act, the reference to a person whose consent is required under Schedule 3 to the Act included a reference to a person whose consent is required by virtue of paragraph (4) below,
- (c) in section 13(6)(a) and (c) of the Act, the references respectively to paragraphs 5 and 7 of Schedule 3 to the Act included references to those paragraphs as applied by paragraph (4) below, and
- (d) in section 14(1)(d) of the Act, the reference to persons whose consent is required under Schedule 3 to the Act included a reference to persons whose consent is required by virtue of paragraph (4) below.

(4) No relevant gametes or embryo shall be–

- (a) used for any purpose unless–
 - (i) in relation to any consent given on or after the appointed day, the provisions of Schedule 3 to the Act apart from paragraph 8 have been complied with, and
 - (ii) in relation to any consent given before the appointed day, the provisions of paragraphs 5 to 7 of that Schedule as modified by paragraph (5) below have been complied with, or
- (b) kept in storage unless paragraph 8 of that Schedule as so modified has been complied with.

(5) Paragraphs 5 to 8 of Schedule 3 to the Act shall apply for the purposes of paragraphs (4)(a)(ii) and (4)(b) above as if references to “effective consent” were to consent in writing given before the appointed day and which has not been withdrawn, and paragraphs 2(4) and 4 of that Schedule shall apply for the purposes of such consent as they apply for the purposes of consent under that Schedule.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

16th June 1991

William Waldegrave
One of Her Majesty's Principal Secretaries of
State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings parts of section 16 of the Human Fertilisation and Embryology Act 1990 (which relates to applications for licences) into force on 8th July 1991 for the purpose of fixing the initial fee payable with licence applications, and imposing the requirement that licence applications be made in an approved form and accompanied by the initial fee. Section 48(1) (which provides for the Act to extend to Northern Ireland) is also brought into force on the same date so far as it relates to those provisions of section 16.

The Order also brings into force on 8th July 1991 section 45, which is the provision under which Regulations under the Act are made, and the following provisions for the purpose of making the Regulations to which they refer—

- section 9(5) (which relates to the composition of licence committees),
- section 10 (which relates to licensing procedure),
- section 14(5) (which relates to alteration of the statutory storage period),
- section 43(1) (which relates to special exemptions from licensing in connection with crime, etc.), and
- section 48(1) (extent) so far as it relates to those provisions. Section 41(3) which creates the offence of supplying false information or misleading information for the purposes of the grant of a licence and section 41(4) which prescribes the penalty for the offence are also brought into force on 8th July.

The Order brings into force on 1st August 1991 all the remaining provisions of the Act which are not already in force on that date, except section 30 (which provides for court orders making a child carried by a surrogate mother the child of the commissioning parents in certain circumstances) and section 48(1) so far as it relates to section 30.

This Order also makes transitional arrangements which apply to persons who on 1st August 1991 are already on activities which on that date become prohibited unless authorised by a licence issued by the Human Fertilisation and Embryology Authority.

Under the transitional arrangements, persons who are carrying on such activities may continue to do so on or after 1st August 1991 provided they have applied for a licence from the Authority, and (in the case of research) that they have a licence from the Interim Licensing Authority. The transitional arrangements last for one year from 1st August 1991 or until their licence application is determined (if sooner).

The Order also provides for what is to happen to gametes and embryos which are already in storage on 1st August 1991. They may continue to be stored for as long as is allowed under section 14 of the Act, but they may not be used for any purpose unless the donors have consented in writing.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Human Fertilisation and Embryology Act 1990 have been brought into force by commencement order made before the date of this Order:

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Provision	Date of commencement	S.I. No.
Section 2(1) (partially)	7.11.1990	1990/2165
Section 5	7.11.1990	1990/2165
Section	6 7.11.1990	1990/2165
Section	7 7.11.1990	1990/2165
Section	26 7.11.1990	1990/2165
Section 33(1), (2)(b) and (4)	7.11.1990	1990/2165
Section 36	7.11.1990	1990/2165
Section 37	1.4.1991	1991/480
Section 40	7.11.1990	1990/2165
Section 41(5), (6) and (9) (partially)	7.11.1990	1990/2165
Section 42	7.11.1990	1990/2165
Section 48(1) (partially)	7.11.1990 and 1.4.1990	1990/2165 and 1991/480
Section 49(1), (2), (6) and (7)	7.11.1990	1990/2165
Schedule 1	7.11.1990	1990/2165