

## SCHEDULE 4

## Article 4

### TRANSITIONAL AND SAVING PROVISIONS

#### **Transitional provisions for licences for treatment**

1.—(1) Subject to sub-paragraphs (2) to (4) the provisions of the 1990 Act, as amended by the 2008 Act (including the new definitions of embryos, sperm, eggs and gametes), shall apply to any licence for treatment granted under paragraph 1 of Schedule 2 to the 1990 Act (licences for treatment) on or before 30th September 2009 (“a relevant treatment licence”) as they would apply to a licence for treatment granted on or after 1st October 2009.

(2) Where a woman presented for treatment services under a relevant treatment licence on or before 30th September 2009 the requirements of section 13(5) of the 1990 Act (conditions of licences for treatment), prior to its amendment by the 2008 Act(1), shall apply in relation to those treatment services.

(3) Where a person has given consent under Schedule 3 to the 1990 Act (consent to use or storage of gametes or embryos) on or before 30th September 2009 in connection with treatment services provided under a relevant treatment licence that consent shall be treated as complying with the requirements of paragraphs 1 and 3(2) of Schedule 3 to the 1990 Act as substituted by the 2008 Act(2).

(4) Where the relevant treatment licence was granted under paragraph 1(1)(d) of Schedule 2 to the 1990 Act and authorises practices designed to determine whether embryos are suitable to be placed in a woman, those practices shall be treated as having been authorised in accordance with new paragraph 1ZA (embryo testing) and 1ZB (sex selection) of Schedule 2 to the 1990 Act(3).

#### **Transitional provisions for licences for research**

2.—(1) Subject to sub-paragraphs (2) to (7) the provisions of the 1990 Act, as amended by the 2008 Act, shall apply to any licence for research granted under paragraph 3 of Schedule 2 to the 1990 Act (licences for research) on or before 30th September 2009 (“a relevant research licence”) as they would apply to a licence for research granted on or after 1st October 2009.

(2) Where a relevant research licence authorises the creation, storage or use of embryos the meaning of “embryo” for the purpose of that licence is the meaning under section 1(1) of the 1990 Act (meaning of embryo, gamete and associated expressions), prior to its amendment by the 2008 Act, and the creation, storage or use of an embryo under the relevant research licence shall be treated as authorised under paragraph 3 of Schedule 2 to the 1990 Act as substituted by the 2008 Act(4).

(3) Where a relevant research licence authorises the storage of eggs, sperm or gametes the meaning of “eggs”, “sperm” and “gametes” for the purpose of that licence is the meaning in section 1(4) of the 1990 Act, prior to its substitution by the 2008 Act(5), and the storage of eggs, sperm or gametes under the relevant research licence shall be treated as authorised under paragraph 3 of Schedule 2 to the 1990 Act as substituted by the 2008 Act.

(4) Where the activities licensed under a relevant research licence fall within new section 4A of the 1990 Act(6) (prohibitions in connection with genetic material not of human origin) the activities that have been licensed shall be treated as lawfully authorised in accordance with section 4A of that Act.

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(1) Section 13(5) is amended by section 14(2) of the 2008 Act.

(2) Paragraph 1 of Schedule 3 to the 1990 Act is substituted by paragraph 3 of Schedule 3 to the 2008 Act and paragraph 3(2) of Schedule 3 to the 1990 Act is amended by paragraph 5 of Schedule 3 to the 2008 Act.

(3) Paragraphs 1ZA and 1ZB are inserted into Schedule 2 to the 1990 Act by paragraph 3 of Schedule 2 to the 2008 Act.

(4) Paragraph 3 of Schedule 2 to the 1990 Act is substituted by paragraph 6 of Schedule 2 to the 2008 Act.

(5) Section 1(4) of the 1990 Act is substituted by section 1(4) of the 2008 Act.

(6) Section 4A is inserted into the 1990 Act by section 4(2) of the 2008 Act.

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(5) Where a relevant research licence authorises the use of human cells of a person (“P”) to bring about the creation of an embryo, as defined in section 1(1) of the 1990 Act prior to its substitution by the 2008 Act(7), it is a condition of the relevant research licence that steps shall be taken to ensure that the embryo cannot subsequently be attributed to P.

(6) Where the provisions of Schedule 3 to the 1990 Act, prior to its amendment by the 2008 Act(8), are complied with as a condition of a relevant research licence, the provisions of Schedule 3 to the 1990 Act, as amended by the 2008 Act, shall be treated as complied with in relation to any research project commenced under that research licence on or before 30th September 2009.

(7) Where a relevant research licence authorises activities in connection with the derivation from embryos of stem cells, and it is intended that such stem cells be used in human application, an application must be made to the Authority to grant a new licence for research under paragraph 3 of Schedule 2 to the 1990 Act as substituted by the 2008 Act.

### **Transitional provisions for licences for storage**

3.—(1) Subject to sub-paragraph (2) the provisions of the 1990 Act, as amended by the 2008 Act (including the new definitions of embryos, sperm, eggs and gametes), shall apply to any licence for storage granted under paragraph 2 of Schedule 2 to the 1990 Act (licences for storage) on or before 30th September 2009 (“a relevant storage licence”) as they would apply to a licence for storage granted on or after 1st October 2009.

(2) Where a person has given consent under Schedule 3 to the 1990 Act (consent to use or storage of gametes or embryos) on or before 30th September 2009 in connection with the storage of an embryo or gametes under a relevant storage licence that consent shall be treated as complying with the requirements of paragraphs 1 and 3(2) of Schedule 3 to the 1990 Act as substituted by the 2008 Act.

### **Transitional provisions for licences for non-medical fertility services**

4.—(1) Subject to sub-paragraph (2) the provisions of the 1990 Act, as amended by the 2008 Act (including the new definitions of embryos, sperm, eggs and gametes), shall apply to any licence for non-medical fertility services granted under paragraph 1A of Schedule 2 to the 1990 Act(9) (licences for non-medical fertility services) on or before 30th September 2009 (“a relevant non-medical fertility service licence”) as they would apply to a licence for non-medical fertility services granted on or after 1st October 2009.

(2) Where a person has provided sperm on or before 30th September 2009 for the purpose of use under a relevant non medical fertility service licence, paragraph 5(1) of Schedule 3 to the 1990 Act (use of gametes for treatment of others) as amended by the 2008 Act(10), shall not apply to the use of those gametes.

### **Transitional provisions for requests for information**

5. Where a person has given notice to the Authority under section 31(6) of the 1990 Act (the Authority’s register of information) on or before 30th September 2009 and the Authority has not provided the information under section 31(7) of the 1990 Act, the notice shall be treated as notice under new section 31ZB(2)(a) of the 1990 Act(11) (request for information as to intended spouse etc).

(7) Section 1(1) of the 1990 Act is substituted by section 1(2) of the 2008 Act.

(8) Schedule 3 to the 1990 Act is amended by Schedule 3 to the 2008 Act.

(9) Paragraph 1A was inserted into the 1990 Act by [S.I. 2007/1522](#).

(10) Paragraph 5(1) of Schedule 3 to the 1990 Act is amended by paragraph 8 of Schedule 3 to the 2008 Act.

(11) Section 31ZB is inserted into the 1990 Act by section 24 of the 2008 Act.

### **Transitional provisions relating to enforcement**

6.—(1) Where a member or employee of the Authority took possession of something on or before 30th September 2009 under section 39(1)(a) of the 1990 Act (powers of members and employees of Authority) the thing taken may be retained for so long as it may be required for the purpose for which it was taken under section 39(1)(a)(i) or (ii) of the 1990 Act (“the relevant purpose”).

(2) Where a member or employee of the Authority on or before 30th September 2009 has taken such steps as are necessary under section 39(1)(b) of the 1990 Act to preserve any thing or to prevent interference with it, including requiring any person having the power to do so to give such assistance as may reasonably be required, the Authority shall be able to continue to take such steps for the relevant purpose under sub-paragraph (1).

(3) Any warrant that was issued under section 40(1) of the 1990 Act (power to enter premises) on or before 30th September, which has not been exercised and has not expired on the 1st October 2009, shall be treated as a warrant issued under paragraph 5 of Schedule 3B to the 1990 Act<sup>(12)</sup> (entry and search in connection with suspected offence), and paragraphs 6 to 11 of that Schedule shall apply to that warrant accordingly.

### **Transitional provisions relating to licence committees**

7.—(1) Where a licence committee has arranged for the inspection of premises under section 9(7), (7A), (8) or (10A) of the 1990 Act<sup>(13)</sup> (licence committees and other committees) on or before 30th September 2009, but the inspection of those premises has not taken place before 1st October 2009, the relevant inspection shall be carried out in accordance with paragraphs 2 to 4 of Schedule 3B to the 1990 Act and a report on the inspection shall be made to the Authority, where required.

(2) Where an inspection of premises has taken place under section 9(7), (7A), (8) or (10A) of the 1990 Act before 1st October 2009 but the report that was requested in relation to that inspection has not been provided to the Authority, the report shall be provided to the Authority in accordance with section 9(7) to (11) of the 1990 Act.

### **Transitional provisions relating to revocation and variation of licence**

8.—(1) Where an application to revoke a licence has been made under section 18(4) of the 1990 Act (revocation and variation of licence) on or before 30th September 2009 but no proposal as referred to in section 19(1) and (2) of the 1990 Act (procedure for refusal, variation or revocation of licence) has been reached by a licence committee the application shall be treated as an application under section 18(1) of the 1990 Act, as substituted by the 2008 Act<sup>(14)</sup> (revocation of licence).

(2) Where an application has been made to vary a licence under section 18(4) of the 1990 Act (revocation and variation of licence) on or before 30th September 2009 but no proposal as referred to in section 19(1) and (2) of the 1990 Act has been reached by a licence committee the application shall be treated as an application under section 18A(2) of the 1990 Act<sup>(15)</sup> (variation of licence).

(3) Where an application has been made to vary a licence so as to designate another individual in place of the person responsible under section 18(5) of the 1990 Act (revocation and variation of licence) on or before 30th September 2009 but no proposal as referred to in section 19(1) and (2) of the 1990 Act has been reached by a licence committee the application shall be treated as an application under section 18A(1) of the 1990 Act.

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<sup>(12)</sup> Schedule 3B is inserted into the 1990 Act by Schedule 5 of the 2008 Act.

<sup>(13)</sup> Section 9(7A) and (10A) were inserted into the 1990 Act and section 9(8) of the 1990 Act was substituted by [S.I. 2007/1522](#).

<sup>(14)</sup> Section 18 of the 1990 Act is substituted by section 18 of the 2008 Act.

<sup>(15)</sup> Section 18A is inserted into the 1990 Act by section 18 of the 2008 Act.

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### **Transitional and saving provisions relating to procedure for refusal, variation or revocation of licence**

**9.**—(1) This sub-paragraph applies in a case where a licence committee has reached a proposal as referred to in section 19(1) or (2) of the 1990 Act on or before 30th September 2009 but a licensing decision has not been made.

(2) Where sub-paragraph (1) applies—

- (a) the licence committee that reached the proposal shall determine the case in accordance with sections 18 and 19 of the 1990 Act, as they applied immediately prior to their substitution by the 2008 Act, and the regulations made under section 10 of the 1990 Act (licensing procedure);
- (b) the decision of the licence committee in relation to that case shall be treated as a decision of the Authority for the purpose of section 20(1) and (2) of the 1990 Act, as substituted by the 2008 Act<sup>(16)</sup> (right to reconsideration of licensing decisions); and
- (c) the reference in section 20(3) of the 1990 Act, as substituted by the 2008 Act, to the notice given under section 19A shall be read as a reference to the notice given under section 19(5) of the 1990 Act prior to substitution by the 2008 Act.

(3) This sub-paragraph applies where a licence committee has given notice of a licensing decision in accordance with section 19(5) and (6) of the 1990 Act on or before 30th September 2009, but on 1st October 2009 28 days have not elapsed from the date such notice was served on the applicant.

(4) Where sub-paragraph (3) applies—

- (a) the decision of the licence committee in relation to that case shall be treated as a decision of the Authority for the purpose of section 20(1) and (2) of the 1990 Act, as substituted by the 2008 Act (right to reconsideration of licensing decisions); and
- (b) the reference in section 20(3) of the 1990 Act, as substituted by the 2008 Act, to the notice given under section 19A shall be read as a reference to the notice given under section 19(5) of the 1990 Act prior to substitution by the 2008 Act.

### **Transitional provisions relating to reconsideration of licensing decisions**

**10.**—(1) This sub-paragraph applies to any appeal in relation to which notice of the appeal was served on the Authority before 1st October 2009 in accordance with section 20(1) or (2) of the 1990 Act (appeal to authority against determinations of licence committee) and which has not been determined.

(2) In this paragraph—

“the 1991 Regulations” means the Human Fertilisation and Embryology Authority (Licence Committee and Appeals) Regulations<sup>(17)</sup>;

“the 2009 Regulations” means the Human Fertilisation and Embryology (Appeals) Regulations 2009<sup>(18)</sup>; and

“the Appeals Committee” means an appeals committee as defined by section 20A(2) of the 1990 Act<sup>(19)</sup> (appeals committee).

(3) Except where sub-paragraph (6) applies, the appeal shall be dealt with by the Appeals Committee in accordance with the 2009 Regulations as modified by sub-paragraphs (4) and (5).

(4) Where sub-paragraph (3) applies, the person appealing (“the appellant”) shall provide the Appeals Committee with the information and documents specified in regulation 16(2) of the 2009

<sup>(16)</sup> Section 20 of the 1990 Act is substituted by section 21 of the 2008 Act.

<sup>(17)</sup> [S.I. No. 1991/1889](#).

<sup>(18)</sup> [S.I. No. 2009/1891](#).

<sup>(19)</sup> Section 20A is inserted into the 1990 Act by section 21 of the 2008 Act.

Regulations to the extent to which they have not been provided to the Authority under the 1991 Regulations.

(5) Where the Appeals Committee receives information and documents under paragraph (4) the Appeals Committee must—

- (a) within 7 days beginning with the date of their receipt, acknowledge receipt of the information and documents to the person who sent them;
- (b) send a copy of the information and documents to the Authority within 7 days beginning with the date of their receipt;
- (c) require the Authority to provide to the Appeals Committee within 21 days of receipt of the information and documents under sub-paragraph (b) copies of any documents the Authority intends to rely on in relation to the reconsideration; and
- (d) within 7 days beginning with the date of their receipt, provide to the appellant or, where appropriate, the appellant's representative copies of any documents provided pursuant to a requirement under sub-paragraph (c).

(6) Where on 1st October 2009 a hearing date has been notified for an appeal or an appeal is being heard, the appeal shall be dealt with by the Authority in accordance with section 20 of the 1990 Act, prior to its substitution by the 2008 Act, and the 1991 Regulations unless the parties and the Authority are content for the Appeals Committee to deal with the appeal under the 2009 Regulations.

(7) Where on 1st October 2009 an appeal has been heard but notice has not been given of the determination the Authority shall give notice of its determination in accordance with section 20(5) of the 1990 Act, prior to its substitution by the 2008 Act.

### **Transitional provisions relating to appeals to High Court or Court of Session**

**11.—**(1) Where the Authority has given notice of its determination of an appeal under section 20(5) of the 1990 Act, prior to its substitution by the 2008 Act, on or before 30th September 2009 and the period for appeal has not expired such notice shall be treated as a decision on reconsideration for the purpose of section 21 of the 1990 Act, as substituted by the 2008 Act<sup>(20)</sup> (appeal on a point of law).

(2) Where—

- (a) paragraph 10(6) of this Schedule applies and the appeal is dealt with by the Authority in accordance with section 20 of the 1990 Act, prior to its substitution by the 2008 Act; or
- (b) paragraph 10(7) of this Schedule applies,

the notice of the Authority's determination under section 20(5) of the 1990 Act shall be treated as a decision on reconsideration for the purposes of section 21 of the 1990 Act, as substituted by the 2008 Act.

### **Transitional provisions relating to suspensions**

**12.** Where a licence was suspended under section 22 of the 1990 Act (temporary suspension of licence) on or before 30th September 2009, and the period of suspension has not yet expired the suspension shall be treated as a suspension under new section 19C of the 1990 Act<sup>(21)</sup> (power to suspend a licence).

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<sup>(20)</sup> Section 21 of the 1990 Act is substituted by section 21 of the 2008 Act.

<sup>(21)</sup> Section 19C is inserted into the 1990 Act by section 19 of the 2008 Act.

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### **Saving provision for information**

**13.** Subject to paragraph 6 of Schedule 3 and any provision made by regulations under section 31ZA of the 1990 Act (request for information as to genetic parentage etc.) following the commencement of section 24 of the 2008 Act (register of information)—

- (a) the Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations 2004 (“the 2004 Regulations”) shall continue to have effect; and
- (b) section 31 of the 1990 Act as in force immediately before the commencement of section 24 of the 2008 Act shall continue to have effect for the purposes of enabling provision to be made amending or revoking the 2004 Regulations,

notwithstanding the substitution of section 31 of the 1990 Act (the Authority’s register of information) by section 24 of the 2008 Act.