

Draft Order laid before Parliament under section 62(3) of the Human Fertilisation and Embryology Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. 000

HUMAN FERTILISATION AND EMBRYOLOGY

**The Human Fertilisation and Embryology (Parental Orders)
(Consequential, Transitional and Saving Provisions) Order 2010**

Made - - - - *000*
Coming into force - - *6th April 2010*

The Secretary of State makes this Order in exercise of the powers conferred by sections 61 and 64 of the Human Fertilisation and Embryology Act 2008(1).

A draft of this instrument was laid before Parliament in accordance with section 62(3) of that Act and approved by a resolution of each House of Parliament.

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Human Fertilisation and Embryology (Parental Orders) (Consequential, Transitional and Saving Provisions) Order 2010 and shall come into force on 6th April 2010.

(2) Any amendment, repeal or modification of any enactment made by this Order shall have the same extent as the enactment to which it relates.

(3) Subject to paragraph (2), this Order extends to England and Wales, Scotland and Northern Ireland.

(4) In this Order—

“the 1990 Act” means the Human Fertilisation and Embryology Act 1990(2);

“the 1994 Regulations” means the Parental Orders (Human Fertilisation and Embryology) Regulations 1994(3);

“the 1994 (Scotland) Regulations” means the Parental Orders (Human Fertilisation and Embryology) (Scotland) Regulations 1994(4); and

“the 2008 Act” means the Human Fertilisation and Embryology Act 2008.

(1) 2008 c.22.

(2) 1990 c.37.

(3) S.I. 1994/2767, amended by S.I. 2005/2897.

(4) S.I. 1994/2804 (S.141).

Consequential amendments

2. The consequential amendments set out in the Schedule to this Order shall have effect.

Pending applications under section 30 of the 1990 Act

3.—(1) Neither the repeal of section 30 of the 1990 Act nor anything in the provisions specified in paragraph (2) affects any application for an order under that section that has been made but not disposed of before the day on which the repeal comes into force.

(2) The provisions referred to are—

- (a) the provisions of the 2008 Act that come into force on the same day as that repeal; and
- (b) the amendments and revocations made by this Order.

Saving for regulations that apply adoption provisions relating to status

4. Despite the repeal of section 30 of the 1990 Act—

- (a) the 1994 Regulations, so far as relating to Part 4 of the Adoption Act 1976⁽⁵⁾ or Part 5 of the Adoption (Northern Ireland) Order 1987⁽⁶⁾; and
- (b) the 1994 (Scotland) Regulations, so far as they relate to Part 4 of the Adoption (Scotland) Act 1978⁽⁷⁾,

remain in force in relation to orders under section 30 of the 1990 Act that are made before the commencement of the repeal of that section or by virtue of article 3 of this Order.

Revocations

5. The following instruments are revoked—

- (a) the 1994 Regulations except to the extent mentioned in article 4;
- (b) the 1994 (Scotland) Regulations except to the extent mentioned in article 4;
- (c) article 14(1) and (2) of the Adoption and Children (Commencement No. 10 Transitional and Savings Provisions) Order 2005⁽⁸⁾; and
- (d) the Adoption and Children (Scotland) Act 2007 (Consequential Provisions) (No. 1) Order 2009⁽⁹⁾

(5) 1976 c.36; Part 4 was amended by the British Nationality Act 1981 (c.61), section 52(6) and Schedule 7; Adoption (Intercountry Aspects) Act 1999 (c.18), sections 4(1), (2) and 17, except in relation to a 1965 Convention adoption order (or an application for such an order) or a 1965 Convention adoption (as defined in section 17(2) of the 1999 Act); the British Overseas Territories Act 2002 (c.8), section 2(3); the Adoption and Children Act 2002 (c.38), section 139(1) and Schedule 3, paragraph 19; the Criminal Justice and Immigration Act 2008 (c.4), section 73(c) and Schedule 15, paragraph 7; S.I. 1986/948 and S.I. 2005/3129.

(6) S.I. 1987/2203 (N.I.22).

(7) 1978 c.28; Part 4 was amended by the British Nationality Act 1981 (c.61), section 52(6) and (8) and Schedule 7 and Schedule 9; the Law Reform (Parent and Child) (Scotland) Act 1986 (c.9), sections 10(1) and 11(4) and Schedule 1, paragraph 18(2); the Incest and Related Offences (Scotland) Act 1986 (c.36), sections 2(1) and 3(4) and Schedule 1, paragraph 5; the Social Security Act 1988 (c.7), sections 16 and 19(3) and Schedule 5; the Children (Scotland) Act 1995 (c.36), section 97(3) (with section 103(1)); the British Overseas Territories Act 2002 (c.8), section 2(2)(a); and by S.I. 1986/948 and S.I. 1996/3201 (as amended by S.I. 1997/744).

(8) S.I. 2005/2897, to which there are amendments not relevant to these Regulations.

(9) S.I. 2009/2233.

Signed by authority of the Secretary of State for Health.

Date

Name
Minister of State,
Department of Health

SCHEDULE

Article 2

Consequential amendments

Family Credit (General) Regulations 1987

1. In paragraph (1) of regulation 2 of the Family Credit (General) Regulations 1987⁽¹⁰⁾ (interpretation), for the definition of “surrogate child” after “section 30 of the Human Fertilisation and Embryology Act 1990” insert—

“(parental orders) or section 54 of the Human Fertilisation and Embryology Act 2008 (parental orders)”.

Social Security (Claims and Payments) Regulations 1987

2. For the entry in column (2) of paragraph 8 of Schedule 4 to the Social Security (Claims and Payments) Regulations 1987⁽¹¹⁾ (prescribed times for claiming benefit), for the words “section 30 of the Human Fertilisation and Embryology Act” substitute—

“section 30 of the Human Fertilisation and Embryology Act 1990 (parental orders) or section 54 of the Human Fertilisation and Embryology Act 2008 (parental orders)”.

Social Security (Claims and Payments) Regulations (Northern Ireland) 1987

3. For the entry in column (2) of paragraph 8 of Schedule 4 to the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987⁽¹²⁾ (prescribed times for claiming benefit), for the words “section 30 of the Human Fertilisation and Embryology Act” substitute—

“section 30 of the Human Fertilisation and Embryology Act 1990 (parental orders) or section 54 of the Human Fertilisation and Embryology Act 2008 (parental orders)”.

High Court (Distribution of Business) Order 1991

4. For sub-paragraph (iv) of article 2(a) of the High Court (Distribution of Business) Order 1991⁽¹³⁾ for “section 30 of the Human Fertilisation and Embryology Act 1990” substitute—

“section 54 of the Human Fertilisation and Embryology Act 2008 (parental orders);”.

Disability Working Allowance (General) Regulations 1991

5. In paragraph (1) of regulation 2 of the Disability Working Allowance (General) Regulations 1991⁽¹⁴⁾ (interpretation), for the definition of “surrogate child” after “section 30 of the Human Fertilisation and Embryology Act 1990” insert—

“(parental orders) or section 54 of the Human Fertilisation and Embryology Act 2008 (parental orders)”.

Data Protection (Miscellaneous Subject Access Exemptions) Order 2000

6.—(1) The Schedule to the Data Protection (Miscellaneous Subject Access Exemptions) Order 2000⁽¹⁵⁾ is amended as follows.

⁽¹⁰⁾ S.I. 1987/1973, amended by S.I. 2001/892; there are other amending instruments but none is relevant.

⁽¹¹⁾ S.I. 1987/1968, amended by S.I. 1997/792; there are other amending instruments but none is relevant.

⁽¹²⁾ S.R. (NI) 1987 No. 465, amended by S.R. (NI) 1997 No. 155; there are other amending instruments but none is relevant.

⁽¹³⁾ S.I. 1991/1210, amended by S.I. 2009/1604.

⁽¹⁴⁾ S.I. 1991/2887, amended by S.I. 2001/892; there are other amending instruments but none is relevant.

⁽¹⁵⁾ S.I. 2000/419, amended by the Constitutional Reform Act 2005 (c.4), section 59(5) and Schedule 11, Part 1, paragraph 3(4).

(2) In Part II, for paragraph (c) substitute—

“(c) Parental Order records and reports

Sections 60, 77, 78 and 79 of the Adoption and Children Act 2002 as applied with modifications by regulation 2 of and Schedule 1 to the Human Fertilisation and Embryology (Parental Orders) Regulations 2010 in relation to parental orders made under section 30 of the Human Fertilisation and Embryology Act 1990 or section 54 of the Human Fertilisation and Embryology Act 2008.

Rules made under section 40 of the Matrimonial and Family Proceedings Act 1984 by virtue of section 141(1) of the Adoption and Children Act 2002, as applied with modifications by regulation 2 of and Schedule 1 to the Human Fertilisation and Embryology (Parental Orders) Regulations 2010, so far as the rules relate to the appointment and duties of the parental order reporter and the custody, inspection and disclosure of documents and information relating to parental order proceedings or related proceedings.

Rules made under section 144 of the Magistrates’ Courts Act 1980 by virtue of section 141(1) of the Adoption and Children Act 2002, as applied with modifications by regulation 2 of and Schedule 1 to the Human Fertilisation and Embryology (Parental Orders) Regulations 2010, so far as the rules relate to the appointment and duties of the parental order reporter and the keeping of registers, custody, inspection and disclosure of documents and information relating to parental order proceedings or related proceedings.”

(3) In Part III, for paragraph (d) substitute—

“(d) Parental Order records and reports

Sections 53 and 55 of the Adoption and Children (Scotland) Act 2007 as applied with modifications by regulation 4 of and Schedule 3 to the Human Fertilisation and Embryology (Parental Orders) Regulations 2010 in relation to parental orders made under section 30 of the Human Fertilisation and Embryology Act 1990 or section 54 of the Human Fertilisation and Embryology Act 2008.

Rules 2.47 and 2.59 of the Act of Sederunt (Child Care and Maintenance Rules) 1997 or rules with equivalent effect replacing those rules.

Rules 81.3 and 81.18 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 or rules with equivalent effect replacing those rules.”

(4) In Part IV, for paragraph (c) substitute—

“(c) Parental Order records and reports

Articles 50 and 54 of the Adoption (Northern Ireland) Order 1987 as applied with modifications by regulation 3 of and Schedule 2 to the Human Fertilisation and Embryology (Parental Orders) Regulations 2010 in respect of parental orders made under section 30 of the Human Fertilisation and Embryology Act 1990 or section 54 of the Human Fertilisation and Embryology Act 2008.

Rules 4, 5 and 16 of Order 84A of the Rules of the Court of Judicature (Northern Ireland) 1980 or rules with equivalent effect replacing those rules.

Rules 3, 4 and 15 of Order 50A of the County Court Rules (Northern Ireland) 1981 or rules with equivalent effect replacing those rules.”

Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002

7. In paragraph (1) of regulation 2 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(16) (interpretation) for the definition of “surrogate child” after “section 30 of the Human Fertilisation and Embryology Act 1990” insert—

“(parental orders) or section 54 of the Human Fertilisation and Embryology Act 2008 (parental orders)”.

Gender Recognition Register Regulations 2005

8. In paragraph (2) of regulation 1 of the Gender Recognition Register Regulations 2005(17) (citation, commencement and interpretation) for the definition of “Parental Order Register” substitute—

““Parental Order Register” means the register maintained by the Registrar General under section 77 of the Adoption and Children Act 2002 as modified by the Human Fertilisation and Embryology (Parental Orders) Regulations 2010.”

Social Fund Maternity and Funeral Expenses (General) Regulations 2005

9.—(1) The Social Fund Maternity and Funeral Expenses (General) Regulations 2005(18) are amended as follows.

(2) In paragraph (2) of regulation 4 (provision against double payment) after “section 30 of the Human Fertilisation and Embryology Act 1990 (parental orders)” insert—

“or section 54 of the Human Fertilisation and Embryology Act 2008 (parental orders)”.

(3) In regulation 5 (entitlement) for paragraph (1)(b)(iii) substitute—

“(iii) the claimant and the claimant’s partner have been granted an order in respect of a child pursuant to section 30 of the Human Fertilisation and Embryology Act 1990 (parental orders) or section 54 of the Human Fertilisation and Embryology Act 2008 (parental orders); and”.

Allocation and Transfer of Proceedings Order 2008

10.—(1) The Allocation and Transfer of Proceedings Order 2008(19) is amended as follows.

(2) In paragraph (d) in the definition of “proceedings” in article 1(3) (citation, commencement, interpretation and application) for “section 30 of the Human Fertilisation and Embryology Act 1990” substitute—

“section 54 of the Human Fertilisation and Embryology Act 2008”.

(3) In paragraph (g) of article 5(1) (proceedings which must be started in a magistrates’ court) for “section 30 of the Human Fertilisation and Embryology Act 1990” substitute—

“section 54 of the Human Fertilisation and Embryology Act 2008”.

(16) S.I. 2002/2005, to which there are amendments not relevant to these Regulations.

(17) S.I. 2005/912, amended by S.I. 2009/1892.

(18) S.I. 2005/3061, to which there are amendments not relevant to these Regulations.

(19) S.I. 2008/2836, to which there are amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 and the Schedule to the Order make consequential amendments to take account of the repeal of section 30 of the Human Fertilisation and Embryology Act 1990 (“the 1990 Act”) and the bringing into force of section 54 of the Human Fertilisation and Embryology Act 2008 and the revocation of the Parental Orders (Human Fertilisation and Embryology) Regulations 1994 (“the 1994 Regulations”) and the Parental Orders (Human Fertilisation and Embryology) (Scotland) Regulations 1994 (“the 1994 (Scotland) Regulations”) at article 5. The areas amended relate to the Parental Order Register, definitions of “surrogate child”, the allocation of court proceedings and social security claims and payments.

Article 3 of the Order makes transitional provision in relation to applications made under section 30 of the 1990 Act which have not been disposed of before 6th April 2010.

Article 4 of this Order makes saving provisions to ensure that, notwithstanding the repeal of section 30 of the 1990 Act, that part of the 1994 Regulations that relates to Part 4 of the Adoption Act 1976 (status of adopted children) or Part 5 of the Adoption (Northern Ireland) Order 1987 (status of adopted children) and that part of the 1994 (Scotland) Regulations that relates to Part 4 of the Adoption (Scotland) Act 1978 (status of adopted children) are saved for the purposes of orders under section 30 of the 1990 Act.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.