



Human Fertilisation and Embryology Act 1990

1990 CHAPTER 37

Information

[^{F1}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)(c) 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,

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- (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) [^{F2}in relation to Northern Ireland,] 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 [^{F3}or subsection (1) of section 54A] 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

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- (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.]

Textual Amendments

- F1** Ss. 33A-33D substituted for s. 33 (6.4.2009 for specified purposes, 1.10.2009 for specified purposes, 6.4.2010 in so far as not already in force) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), ss. 25, 68(2); [S.I. 2009/479](#), art. 5(e)(h) (with art. 7 Sch.); [S.I. 2009/2232](#), art. 2(1); [S.I. 2010/987](#), [art. 2\(a\)](#)
- F2** Words in s. 33A(2)(m) inserted (31.12.2020) by [S.I. 2019/482](#), [reg. 2\(13\)](#) (as substituted by [The Human Fertilisation and Embryology \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1307\)](#), regs. 1, [14](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#))
- F3** Words in s. 33A(2)(q) inserted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), art. 1(1), [Sch. 1 para. 4\(2\)](#))

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Changes and effects yet to be applied to :

- s. 33A(1) excluded by [S.I. 2009/2232 art. 4](#)
- s. 33A(2)(m) omitted by [S.I. 2019/482 reg. 2\(13\)](#)