

SCHEDULES

SCHEDULE 6

AMENDMENTS RELATING TO PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION

PART 2

ENACTMENTS RELATING ONLY TO SCOTLAND

Children and Young Persons (Scotland) Act 1937 (c. 37)

- 41 In section 110(1) of the Children and Young Persons (Scotland) Act 1937 (interpretation), in the definition of “parental responsibilities”—
- (a) the words from “a father” to the end become paragraph (a), and
 - (b) after that paragraph insert—
 - “(b) a second female parent would have as a parent but for the operation of section 3(1)(d) of that Act.”

Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49)

- 42 In section 14 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (duty to give information of particulars of birth), after subsection (4) insert—
- “(4A) In the case of a child who has a parent by virtue of section 42 of the Human Fertilisation and Embryology Act 2008, the references in subsections (1) and (2) to the father of the child are to be read as references to the woman who is a parent by virtue of that section.”
- 43 For section 18ZA of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 substitute—

“18ZA Registration of father or second female parent by virtue of certain provisions of the Human Fertilisation and Embryology Act 2008

- (1) The registrar shall not enter in the register—
- (a) as the father of a child the name of a man who is to be treated for that purpose as the father of the child by virtue of section 39(1) or 40(1) or (2) of the Human Fertilisation and Embryology Act 2008 (circumstances in which man to be treated as father of child for purpose of registration of birth where fertility treatment undertaken after his death); or
 - (b) as a parent of the child, the name of a woman who is to be treated for that purpose as a parent of the child by virtue of section 46(1) or (2) of that Act (circumstances in which woman to be treated as parent of child for purposes of registration of birth where fertility treatment undertaken after her death),

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unless the condition in subsection (2) below is satisfied.

- (2) The condition in this subsection is satisfied if—
- (a) the mother requests the registrar to make such an entry in the register and produces the relevant documents; or
 - (b) in the case of the death or inability of the mother, the relevant documents are produced by some other person who is a qualified informant.
- (3) In this section “the relevant documents” means—
- (a) the consent in writing and election mentioned in section 39(1), 40(1) or (2) or 46(1) or (2) (as the case requires) of the Human Fertilisation and Embryology Act 2008;
 - (b) a certificate of a registered medical practitioner as to the medical facts concerned; and
 - (c) such other documentary evidence (if any) as the registrar considers appropriate.”

44 After section 18A of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 insert—

“18B Births of children where second female parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008

- (1) No woman shall as a parent of a child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 (“the woman concerned”) be required, as a parent of the child, to give information concerning the birth of the child and, save as provided in section 20 of this Act, the district registrar for the registration district shall not enter in the birth registration form concerning the birth the name and surname of any woman as a parent of the child by virtue of section 43 of that Act of 2008 except—
- (a) at the joint request of the mother and the woman concerned (in which case the woman concerned shall attest, in the prescribed manner, the birth registration form together with the mother); or
 - (b) at the request of the mother on production of—
 - (i) a declaration in the prescribed form made by the mother stating that the woman concerned is a parent of the child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008; and
 - (ii) a statutory declaration made by the woman concerned acknowledging herself to be a parent of the child by virtue of section 43 of that Act; or
 - (c) at the request of the mother on production of a decree by a competent court finding or declaring the woman concerned to be a parent of the child by virtue of section 43 of that Act; or
 - (d) at the request of the woman concerned on production of—
 - (i) a declaration in the prescribed form made by the woman concerned acknowledging herself to be a parent of the child by virtue of section 43 of that Act; and
 - (ii) a statutory declaration made by the mother stating that the woman concerned is a parent of the child by virtue of section 43 of that Act.

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- (2) Where a person acknowledging herself to be a parent of the child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 makes a request to the district registrar for the registration district in accordance with paragraph (d) of subsection (1) of this section, she shall be treated as a qualified informant concerning the birth of the child for the purposes of this Act; and the giving of information concerning the birth of the child by that person and the attesting of the birth registration form concerning the birth by her in the presence of the registrar shall act as a discharge of any duty of any other qualified informant under section 14 of this Act.
- (3) In any case where the name and surname of a woman who is a parent of a child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 has not been entered in the birth registration form concerning the birth, the Registrar General may record that name and surname by causing an appropriate entry to be made in the Register of Corrections Etc.—
- (a) if there is produced to him a declaration and a statutory declaration such as are mentioned in paragraph (b) or (d) of subsection (1) of this section; or
 - (b) if, where the mother is dead or cannot be found or is incapable of making a request under subsection (1)(b) or (c) of this section, or a declaration under subsection (1)(b)(i) or a statutory declaration under subsection (1)(d)(ii) of this section, the Registrar General is ordered so to do by the sheriff upon application made to the sheriff by the person acknowledging herself to be a parent of the child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008.”

45 In section 20 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965—

- (a) after subsection (1)(c) insert “, or
 - (d) the entry relating to the child in the register of births has been made so as to imply that the person, other than the mother, recorded as a parent of the child is so by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and the mother and that person have subsequently become parties to a civil partnership with each other and subject to subsection (1B) below,” and
- (b) in subsection (1B)—
 - (i) after “(c)” insert “or (d)”,
 - (ii) after “paternity” insert “or parentage”, and
 - (iii) after “18” insert “or 18B”.

Family Law (Scotland) Act 1985 (c. 37)

46 In section 9(1)(c)(ii) of the Family Law (Scotland) Act 1985 (court to consider burden of caring for child following dissolution of civil partnership), after “family” insert “or in respect of whom they are, by virtue of sections 33 and 42 of the Human Fertilisation and Embryology Act 2008, the parents”.

47 In section 27(1) of the Family Law (Scotland) Act 1985 (interpretation), in the definition of “family”, at the end insert “or in respect of whom they are, by virtue

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of sections 33 and 42 of the Human Fertilisation and Embryology Act 2008, the parents;”.

Children (Scotland) Act 1995 (c. 36)

48 In section 1(1) of the Children (Scotland) Act 1995 (parental responsibilities), after “3(1)(b)” insert “, and (d)”.

49 In section 2(1) of the Children (Scotland) Act 1995 (parental rights), after “3(1)(b)” insert “, and (d)”.

50 (1) Section 3 of the Children (Scotland) Act 1995 (provisions relating both to parental responsibilities and parental rights) is amended as follows.

(2) After subsection (1)(b), insert—

“(c) without prejudice to any arrangements which may be made under subsection (5) below, where a child has a parent by virtue of section 42 of the Human Fertilisation and Embryology Act 2008, that parent has parental responsibilities and parental rights in relation to the child;

(d) without prejudice to any arrangements which may be made under subsection (5) below and subject to any agreement which may be made under section 4A(1) of this Act, where a child has a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008, that parent has parental responsibilities and parental rights in relation to the child if she is registered as a parent of the child under any of the enactments mentioned in subsection (3A).”

(3) After subsection (3), insert—

“(3A) Those enactments are—

(a) paragraphs (a), (b) and (d) of section 18B(1) and section 18B(3)(a) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965;

(b) paragraphs (a), (b) and (c) of section 10(1B) and of section 10A(1B) of the Births and Deaths Registration Act 1953;

(c) sub-paragraphs (a), (b) and (c) of Article 14ZA(3) of the Births and Deaths Registration (Northern Ireland) Order 1976.”

(4) In subsection (5), for “section 4(1)” substitute “sections 4(1) and 4A(1)”.

51 After section 4 of the Children (Scotland) Act 1995 insert—

“4A Acquisition of parental responsibilities and parental rights by second female parent by agreement with mother

(1) Where—

(a) a child’s mother has not been deprived of some or all of the parental responsibilities and parental rights in relation to the child; and

(b) the child has a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and that parent is not registered as such under any of the enactments mentioned in section 3(3A),

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the mother and the other parent may by agreement provide that, as from the appropriate date, the other parent shall have the parental responsibilities and rights (in the absence of any order under section 11 of this Act affecting responsibilities and rights) as if the other parent were treated as a parent by virtue of section 42 of that Act of 2008.

(2) Section 4(2), (3) and (4) applies in relation to an agreement under subsection (1) of this section as it applies in relation to an agreement under subsection (1) of section 4.”

52 (1) Section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities) is amended as follows.

(2) In subsection (4)(c)—

- (a) for “subsection (9) of section 30 of the Human Fertilisation and Embryology Act 1990 (provision for enactments about adoption to have effect with modifications)” substitute “section 55(1) of the Human Fertilisation and Embryology Act 2008 (parental orders: supplementary provision)”, and
- (b) for “subsection (1) of that section” substitute “section 54 of that Act”.

(3) In subsection (11), after “4(2)” insert “or 4A(2)”.

53 In section 12(4)(b) of the Children (Scotland) Act 1995 (meaning of “child of the family” in civil partnership cases)—

- (a) the words from “who” to the end become sub-paragraph (i), and
- (b) after that sub-paragraph insert “; or
 - (ii) whose parents are the partners (being parents by virtue of sections 33 and 42 of the Human Fertilisation and Embryology Act 2008).”

54 In section 15(1) of the Children (Scotland) Act 1995 (interpretation of Part 1), in the definition of “parent”—

- (a) after “1990” insert “and Part 2 of the Human Fertilisation and Embryology Act 2008”, and
- (b) for “subsection (9) of the said section 30” substitute “section 55(1) of that Act of 2008”.

Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)

55 In section 1(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (offence of incest), at the end of the table set out at the end of that subsection insert—

“3. Relationships by virtue of Part 2 of the Human Fertilisation and Embryology Act 2008

| | |
|---|--------|
| Mother | Father |
| Daughter | Son |
| Second female parent by virtue of section 42 or 43 of that Act” | |

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Adoption and Children (Scotland) Act 2007 (asp 4)

- 56 (1) Section 30 of the Adoption and Children (Scotland) Act 2007 (adoption by one person) is amended as follows.
- (2) In subsection (7), for paragraph (c) substitute—
- “(c) by virtue of the provisions specified in subsection (7A), there is no other parent, or”.
- (3) After subsection (7) insert—
- “(7A) The provisions referred to in subsection (7)(c) are—
- (a) section 28 of the Human Fertilisation and Embryology Act 1990 (disregarding subsections (5A) to (5I) of that section), or
- (b) sections 34 to 47 of the Human Fertilisation and Embryology Act 2008 (disregarding sections 39, 40 and 46 of that Act).”