



# Human Fertilisation and Embryology Act 2008

## 2008 CHAPTER 22

### PART 3

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous*

#### **59 Surrogacy arrangements**

- (1) The Surrogacy Arrangements Act 1985 (c. 49) is amended as follows.
- (2) In section 1 (meaning of various terms), after subsection (7) insert—
  - “(7A) “Non-profit making body” means a body of persons whose activities are not carried on for profit.”
- (3) In section 2 (negotiating surrogacy arrangements on a commercial basis), in subsection (1)—
  - (a) in paragraph (a) omit “or take part in”, and
  - (b) after paragraph (a) insert—
    - “(aa) take part in any negotiations with a view to the making of a surrogacy arrangement.”
- (4) After subsection (2) insert—
  - “(2A) A non-profit making body does not contravene subsection (1) merely because—
    - (a) the body does an act falling within subsection (1)(a) or (c) in respect of which any reasonable payment is at any time received by it or another, or

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- (b) it does an act falling within subsection (1)(a) or (c) with a view to any reasonable payment being received by it or another in respect of facilitating the making of any surrogacy arrangement.
- (2B) A person who knowingly causes a non-profit making body to do an act falling within subsection (1)(a) or (c) does not contravene subsection (1) merely because—
  - (a) any reasonable payment is at any time received by the body or another in respect of the body doing the act, or
  - (b) the body does the act with a view to any reasonable payment being received by it or another person in respect of the body facilitating the making of any surrogacy arrangement.
- (2C) Any reference in subsection (2A) or (2B) to a reasonable payment in respect of the doing of an act by a non-profit making body is a reference to a payment not exceeding the body's costs reasonably attributable to the doing of the act.”
- (5) After subsection (5) of that section insert—
  - “(5A) A non-profit making body is not guilty of an offence under subsection (5), in respect of the receipt of any payment described in that subsection, merely because a person acting on behalf of the body takes part in facilitating the making of a surrogacy arrangement.”
- (6) After subsection (8) of that section insert—
  - “(8A) A person is not guilty of an offence under subsection (7) if—
    - (a) the body of persons referred to in that subsection is a non-profit making body, and
    - (b) the only activity of that body which falls within subsection (8) is facilitating the making of surrogacy arrangements in the United Kingdom.
  - (8B) In subsection (8A)(b) “facilitating the making of surrogacy arrangements” is to be construed in accordance with subsection (8).”
- (7) In section 3 (advertisements about surrogacy), after subsection (1) insert—
  - “(1A) This section does not apply to any advertisement placed by, or on behalf of, a non-profit making body if the advertisement relates only to the doing by the body of acts that would not contravene section 2(1) even if done on a commercial basis (within the meaning of section 2).”

## **60 Exclusion of embryos from definition of “organism” in Part 6 of the EPA 1990**

- (1) Section 106 of the Environmental Protection Act 1990 (c. 43) (meaning of “genetically modified organisms” etc.) is amended as follows.
- (2) In subsection (2), for “or human embryos” substitute “ , human embryos or human admixed embryos ”.
- (3) After subsection (3) insert—
  - “(3A) For the purposes of subsection (2) above—
    - (a) “human embryo” means an embryo within the meaning given in the provisions of the Human Fertilisation and Embryology Act 1990

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- (apart from section 4A) by virtue of section 1(1) and (6) of that Act, and
- (b) “human admixed embryo” has the same meaning as it has in that Act by virtue of section 4A(6) and (11) of that Act.”

### *General*

## **61 Orders and regulations: general provisions**

- (1) Any power of the Secretary of State to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) Any power of the Secretary of State to make an order or regulations under this Act may be exercised—
  - (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case, and
  - (b) so as to make, as respects the cases in relation to which it is exercised—
    - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
    - (ii) the same provision for all cases in relation to which the power is exercised, or different provision as respects the same case or class of case for different purposes;
    - (iii) any such provision either unconditionally, or subject to any specified condition.
- (3) Any power of the Secretary of State to make an order or regulations under this Act includes power to make such transitional, saving, incidental or supplemental provision as the Secretary of State considers appropriate.

## **62 Orders and regulations: parliamentary control**

- (1) Orders made by the Secretary of State under this Act are subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Subsection (1) does not apply to—
  - (a) an order to which subsection (3) applies, or
  - (b) an order under section 68 (commencement).
- (3) No order under section 64 (power to make consequential and transitional provision etc.) which includes provision made by virtue of subsection (2) of that section may be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (4) No regulations under section 55 (parental orders: supplementary provision) may be made unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.

## **63 Meaning of “the 1990 Act”**

In this Act, “the 1990 Act” means the Human Fertilisation and Embryology Act 1990 (c. 37).

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## **64 Power to make consequential and transitional provision etc.**

- (1) The Secretary of State may by order make—
  - (a) any supplementary, incidental or consequential provision, and
  - (b) any transitional or saving provision,
 that the Secretary of State considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under this section may modify—
  - (a) any enactment passed or made before the passing of this Act, and
  - (b) any enactment passed or made before the end of the Session in which this Act is passed.
- (3) An order under this section which modifies an enactment in consequence of any provision of Part 2 may modify subsection (5) of section 53 (interpretation of references to father etc.).
- (4) An order under this section may provide for any provision of this Act which comes into force before any other provision comes into force to have effect, until that other provision has come into force, with specified modifications.
- (5) Before making an order under this section containing provision which would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament, the Secretary of State must consult the Scottish Ministers.
- (6) Before making an order under this section containing provision which would be within the legislative competence of the National Assembly for Wales if it were included in [<sup>F1</sup>an Act of the Assembly], the Secretary of State must consult the Welsh Ministers.
- (7) Before making an order under this section containing provision which would, if included in an Act of the Northern Ireland Assembly, be within the legislative competence of that Assembly, the Secretary of State must consult the Department of Health, Social Services and Public Safety.
- (8) Nothing in this section limits the power under section 61 to include transitional or saving provision in a commencement order under section 68(2).
- (9) The modifications that may be made by virtue of subsection (2) are in addition to those that are made by any other provision of this Act.
- (10) In this section—
 

“enactment” means an enactment contained in, or in an instrument made under—

  - (a) an Act of Parliament,
  - (b) an Act of the Scottish Parliament,
  - (c) a Measure of the National Assembly for Wales, or
  - (d) Northern Ireland legislation;

“modify” includes amend, add to, revoke or repeal, and references to “modifications” are to be read accordingly;

“the Assembly Act provisions” has the meaning given by section 103(8) of the Government of Wales Act 2006 (c. 32).

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### Textual Amendments

- F1** Words in s. 64(6) substituted (1.4.2018) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), [Sch. 6 para. 72](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179](#), reg. 3(r)

## 65 Minor and consequential amendments

Schedule 7 contains minor and consequential amendments.

### Commencement Information

- I1** [S. 65](#) wholly in force at 1.10.2009; [s. 65](#) not in force at Royal Assent see [s. 68](#); [s. 65](#) in force at 6.4.2009 for certain purposes by [S.I. 2009/479](#), [art. 5\(g\)](#); [s. 65](#) in force at 1.10.009 otherwise by [S.I. 2009/2232](#), [art. 2\(f\)](#)

## 66 Repeals and revocations

Schedule 8 contains repeals and revocations.

### Commencement Information

- I2** [S. 66](#) wholly in force at 6.4.2010; [s. 66](#) not in force at Royal Assent see [s. 68](#); [s. 66](#) in force for certain purposes at 6.4.2009 and for further certain purposes at 1.9.2009 by [S.I. 2009/479](#), [arts. 2, 6\(1\)\(e\)\(2\)](#) (with [Sch.](#)); [s. 66](#) in force for further certain purposes at 1.10.2009 by [S.I. 2009/2232](#), [art. 2\(z\)](#); [s. 66](#) in force at 6.4.2010 otherwise by [S.I. 2010/987](#), [art. 2\(f\)](#)

## 67 Extent

- (1) Subject to the following provisions, this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Any amendment or repeal made by this Act has the same extent as the enactment to which it relates (ignoring extent by virtue of an Order in Council).
- (3) Subsection (2) is subject to paragraph 1(2) of Schedule 6.
- (4) Her Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to the Bailiwick of Guernsey.
- (5) Subsection (4) does not authorise the extension to the Bailiwick of Guernsey of a provision of this Act so far as the provision amends an enactment that does not itself extend there and is not itself capable of being extended there in exercise of a power conferred on Her Majesty in Council.
- (6) Subsection (4) does not apply in relation to the extension to the Bailiwick of Guernsey of a provision which extends there by virtue of subsection (2).
- (7) Subsection (3) of section 61 applies to the power to make an Order in Council under this section as it applies to any power of the Secretary of State to make an order under this Act, but as if the references in that subsection to the Secretary of State were references to Her Majesty in Council.

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## 68 Commencement

- (1) The following provisions of this Act come into force on the day on which this Act is passed—
  - sections 61 to 64;
  - section 67, this section and section 69.
- (2) The remaining provisions of this Act come into force in accordance with provision made by the Secretary of State by order.

### Subordinate Legislation Made

- P1** S. 68(2) power partly exercised; different dates appointed for specified provisions and purposes by S.I. 2009/479, **arts. 2-6** (with **Sch.**) (as amended by S.I. 2009/2232, **art. 3**); 1.10.2009 appointed for specified provisions and purposes by S.I. 2009/2232, **art. 2** (with **art. 4**); 6.4.2010 appointed for specified provisions and purposes by S.I. 2010/987, **art. 2**

## 69 Short title

This Act may be cited as the Human Fertilisation and Embryology Act 2008.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 55(3)(e) and word inserted by [2022 c. 18 \(N.I.\) Sch. 3 para. 75\(b\)](#)