



# Human Fertilisation and Embryology Act 1990

## 1990 CHAPTER 37

### *Offences*

#### **41 Offences.**

- (1) A person who—
- (a) contravenes section 3(2) [<sup>F1</sup>, 3A] or 4(1)(c) of this Act, or
  - (b) does anything which, by virtue of section 3(3) of this Act, cannot be authorised by a licence,
- is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding ten years or a fine or both.
- (2) A person who—
- (a) contravenes section 3(1) of this Act, otherwise than by doing something which, by virtue of section 3(3) of this Act, cannot be authorised by a licence,
  - (b) keeps or uses any gametes in contravention of section 4(1)(a) or (b) of this Act,
  - (c) contravenes section 4(3) of this Act, or
  - (d) fails to comply with any directions given by virtue of section 24(7)(a) of this Act,
- is guilty of an offence.
- (3) If a person—
- (a) provides any information for the purposes of the grant of a licence, being information which is false or misleading in a material particular, and
  - (b) either he knows the information to be false or misleading in a material particular or he provides the information recklessly,
- he is guilty of an offence.
- (4) A person guilty of an offence under subsection (2) or (3) above is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, and

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*Status: Point in time view as at 10/04/1995.*

*Changes to legislation: There are currently no known outstanding effects for the Human Fertilisation and Embryology Act 1990, Cross Heading: Offences. (See end of Document for details)*

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- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (5) A person who discloses any information in contravention of section 33 of this Act is guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (6) A person who—
- (a) fails to comply with a requirement made by virtue of section 39(1)(b) or (2)(b) or 40(2)(b)(ii) or (5)(b) of this Act, or
  - (b) intentionally obstructs the exercise of any rights conferred by a warrant issued under section 40 of this Act,
- is guilty of an offence.
- (7) A person who without reasonable excuse fails to comply with a requirement imposed by regulations made by virtue of section 10(2)(a) of this Act is guilty of an offence.
- (8) Where a person to whom a licence applies or the nominal licensee gives or receives any money or other benefit, not authorised by directions, in respect of any supply of gametes or embryos, he is guilty of an offence.
- (9) A person guilty of an offence under subsection (6), (7) or (8) above is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level five on the standard scale or both.
- (10) It is a defence for a person (“the defendant”) charged with an offence of doing anything which, under section 3(1) or 4(1) of this Act, cannot be done except in pursuance of a licence to prove—
- (a) that the defendant was acting under the direction of another, and
  - (b) that the defendant believed on reasonable grounds—
    - (i) that the other person was at the material time the person responsible under a licence, a person designated by virtue of section 17(2)(b) of this Act as a person to whom a licence applied, or a person to whom directions had been given by virtue of section 24(9) of this Act, and
    - (ii) that the defendant was authorised by virtue of the licence or directions to do the thing in question.
- (11) It is a defence for a person charged with an offence under this Act to prove—
- (a) that at the material time he was a person to whom a licence applied or to whom directions had been given, and
  - (b) that he took all such steps as were reasonable and exercised all due diligence to avoid committing the offence.

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#### Textual Amendments

**F1** Words in s. 41(1)(a) inserted (10.4.1995) by 1994 c. 33, s. 156(3); S.I. 1995/721, art. 2, Sch.

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**Status:** Point in time view as at 10/04/1995.

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**Commencement Information**

- II** S. 41 wholly in force; s. 41 not in force at Royal Assent see s. 49(2); s. 41(3)(4) in force 8.7.1991 and the remaining provisions in force 1.8.1991 see S.I. 1990/2165 and [S.I. 1991/1400](#), [art. 2\(1\)\(d\)\(e\)\(2\)](#)

**42 Consent to prosecution.**

No proceedings for an offence under this Act shall be instituted—

- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions, and
- (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

**Status:**

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**Changes to legislation:**

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