



# Human Fertilisation and Embryology (Disclosure of Information) Act 1992

## 1992 CHAPTER 54

An Act to relax the restrictions on the disclosure of information imposed by section 33(5) of the Human Fertilisation and Embryology Act 1990. [16th July 1992]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Relaxation of section 33(5) of the Human Fertilisation and Embryology Act 1990**

- (1) Section 33 of the Human Fertilisation and Embryology Act 1990 (subsection (5) of which prohibits disclosure of information falling within section 31(2) of that Act by a person to whom a licence under Schedule 2 to that Act applies or to whom directions under section 23 of that Act have been given) shall be amended as mentioned in subsections (2) to (4) below.
- (2) In subsection (6) (general exceptions from subsection (5)) the word “or” at the end of paragraph (d) is hereby repealed and at the end there shall be inserted—
  - “(f) necessarily—
    - (i) for any purpose preliminary to proceedings, or
    - (ii) for the purposes of, or in connection with, any proceedings,
  - (g) for the purpose of establishing, in any proceedings relating to an application for an order under subsection (1) of section 30 of this Act, whether the condition specified in paragraph (a) or (b) of that subsection is met, or
  - (h) under section 3 of the Access to Health Records Act 1990 (right of access to health records).”
- (3) After subsection (6) there shall be inserted—

- “(6A) Paragraph (f) of subsection (6) above, so far as relating to disclosure for the purposes of, or in connection with, any proceedings, does not apply—
- (a) to disclosure of 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 to this Act, for the purposes of treatment services in consequence of which an identifiable individual was, or may have been, born, 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.
- (6B) In the case of information relating to the provision of treatment services for any identifiable individual—
- (a) where one individual is identifiable, subsection (5) above does not apply to disclosure with the consent of that individual;
  - (b) where both a woman and a man treated together with her are identifiable, subsection (5) above does not apply—
    - (i) to disclosure with the consent of them both, or
    - (ii) if disclosure is made for the purpose of disclosing information about the provision of treatment services for one of them, to disclosure with the consent of that individual.
- (6C) For the purposes of subsection (6B) above, consent must be to disclosure to a specific person, except where disclosure is to a person who needs to know—
- (a) in connection with the provision of treatment services, or any other description of medical, surgical or obstetric services, for the individual giving the consent,
  - (b) in connection with the carrying out of an audit of clinical practice, or
  - (c) in connection with the auditing of accounts.
- (6D) For the purposes of subsection (6B) above, consent to disclosure given at the request of another shall be disregarded unless, before it is given, the person requesting it takes reasonable steps to explain to the individual from whom it is requested the implications of compliance with the request.
- (6E) In the case of information which relates to the provision of treatment services for any identifiable individual, subsection (5) above does not apply to disclosure in an emergency, that is to say, to disclosure made—
- (a) 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 with whose consent the information could be disclosed under subsection (6B) above, and
  - (b) in circumstances where it is not reasonably practicable to obtain that individual’s consent.
- (6F) In the case of information which shows that any identifiable individual was, or may have been, born in consequence of treatment services, subsection (5) above does not apply to any disclosure which is necessarily incidental to disclosure under subsection (6B) or (6E) above.
- (6G) Regulations may provide for additional exceptions from subsection (5) above, but no exception may be made under this subsection—

- (a) for disclosure of a kind mentioned in paragraph (a) or (b) of subsection (6A) above, or
  - (b) for disclosure, in circumstances in which section 32 of this Act applies, of information having the tendency mentioned in subsection (2) of that section.”
- (4) At the end there shall be inserted—
- “(9) In subsection (6)(f) above, references to proceedings include any formal procedure for dealing with a complaint.”
- (5) This section applies in relation to information obtained before, as well as in relation to information obtained after, the passing of this Act.

## **2 Short title etc**

- (1) This Act may be cited as the Human Fertilisation and Embryology (Disclosure of Information) Act 1992.
- (2) In section 45(4) of the Human Fertilisation and Embryology Act 1990, after “31(4)(a),” there shall be inserted “33(6G),”.
- (3) This Act (except section 1(2), so far as relating to the inserted section 33(6)(h)) extends to Northern Ireland.
- (4) In section 48(1) of the Human Fertilisation and Embryology Act 1990 (extent to Northern Ireland) for “section” there shall be substituted “sections 33(6)(h) and”.
- (5) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend, with such exceptions, adaptations and modifications (if any) as may be specified in the Order, to any of the Channel Islands.