



Human Fertilisation and Embryology Act 2008

2008 CHAPTER 22

PART 1

AMENDMENTS OF THE HUMAN FERTILISATION AND EMBRYOLOGY ACT 1990

Miscellaneous

27 Fees

After section 35A of the 1990 Act (as inserted by section 26 above) insert—

“Fees

35B Fees

- (1) The Authority may charge a fee in respect of any of the following—
- (a) an application for a licence,
 - (b) the grant or renewal of a licence,
 - (c) an application for the revocation or variation of a licence, or
 - (d) the exercise by the Authority of any other function conferred on it by or under this Act or by or under any other enactment—
 - (i) in relation to a licence,
 - (ii) in relation to premises which are or have been premises to which a licence relates,
 - (iii) in relation to premises which are or have been relevant third party premises in relation to a licence, or
 - (iv) in relation to premises which, if an application is granted, will be premises to which a licence relates or relevant third party premises.

Status: Point in time view as at 01/10/2009.

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- (2) The amount of any fee charged by virtue of subsection (1) is to be fixed in accordance with a scheme made by the Authority with the approval of the Secretary of State and the Treasury.
- (3) In fixing the amount of any fee to be charged by virtue of that subsection, the Authority may have regard to the costs incurred by it—
 - (a) in exercising the functions conferred on it by or under this Act (apart from sections 31ZA to 31ZG and 33D), and
 - (b) in exercising any other function conferred on it by or under any other enactment.
- (4) The Authority may also charge such fee as it thinks fit in respect of any of the following—
 - (a) the giving of notice under section 31ZA(1) or 31ZB(1), or
 - (b) the provision of information under section 31ZA, 31ZB or 31ZE.
- (5) In fixing the amount of any fee to be charged by virtue of subsection (4) the Authority may have regard to the costs incurred by it in exercising the function to which the fee relates.
- (6) When exercising its power to charge fees under section 8(2), 31ZF(2)(d) or this section, the Authority may fix different fees for different circumstances.”

28 Inspection, entry, search and seizure

- (1) Before section 39 of the 1990 Act (but after the heading “Enforcement” immediately before that section) insert—

“38A Inspection, entry, search and seizure

- (1) Schedule 3B (which makes provisions about inspection, entry, search and seizure) has effect.
 - (2) Nothing in this Act makes it unlawful for a member or employee of the Authority to keep any embryo, human admixed embryo or gametes in pursuance of that person's functions as such.”
- (2) After Schedule 3A to the 1990 Act insert the Schedule set out in Schedule 5 to this Act (inspection, entry, search and seizure).
 - (3) Section 39 of the 1990 Act (powers of members and employees of Authority) and section 40 of that Act (power to enter premises) (which are superseded by the amendments made by subsection (2)) cease to have effect.

29 Offences under the 1990 Act

- (1) Section 41 of the 1990 Act (offences) is amended as follows.
- (2) In subsection (1)(a), for “4(1)(c)” substitute “ 4A(1) or (2) ”.
- (3) In subsection (2)—
 - (a) after paragraph (a) insert—
 - “(aa) contravenes section 3(1B) of this Act,”,

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- (b) after paragraph (ba) insert—
 - “(bb) contravenes section 4(1A) of this Act,” and
- (c) in paragraph (d), for “section 24(7)(a)” substitute “ section 24(5D) ”.
- (4) In subsection (4), omit “, other than an offence to which subsection (4B) applies,”.
- (5) In subsection (5), for “section 33” substitute “ section 33A ”.
- (6) In subsection (7), for “section 10(2)(a)” substitute “ section 19B(3)(a) or 20B(3)(e) ”.
- (7) In subsection (8)—
 - (a) for “or the nominal licensee” substitute “ or the holder of the licence ”, and
 - (b) for “or embryos” substitute “ , embryos or human admixed embryos ”.
- (8) In subsection (9), omit “(6),”.
- (9) For subsection (10) substitute—
 - “(10) It is a defence for a person (“the defendant”) charged with an offence of doing anything which, under section 3(1) or (1A), 4(1) or 4A(2), 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 under section 24(5A) to (5D), and
 - (ii) that the defendant was authorised by virtue of the licence or directions to do the thing in question.
- (10A) It is a defence for a person (“the defendant”) charged with an offence of doing anything which, under section 3(1A) or (1B) or 4(1A), cannot be done except in pursuance of a licence or a third party agreement 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, a person to whom a third party agreement applied, or a person to whom directions had been given under section 24(5A) to (5D), and
 - (ii) that the defendant was authorised by virtue of the licence, third party agreement or directions to do the thing in question.”
- (10) Omit subsections (2A), (4A), (4B) and (6).
- (11) Section 41(2) of the 1990 Act as amended by subsection (3) is to be treated as a relevant enactment for the purposes of section 282 of the Criminal Justice Act 2003 (c. 44) (increase in maximum term that may be imposed on summary conviction of offence triable either way).

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30 Regulations under the 1990 Act

(1) Section 45 of the 1990 Act (regulations) is amended as follows.

(2) After subsection (1) insert—

“(1A) Subsection (1) does not enable the Secretary of State to make regulations by virtue of section 19(6) (which confers regulation-making powers on the Authority).”

(3) In subsection (2), after “regulations” insert “ under this Act ”.

(4) For subsection (3) substitute—

“(3) The power to make 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.

(3A) Any power of the Secretary of State or the Authority to make regulations under this Act includes power to make such transitional, incidental or supplemental provision as the Secretary of State or the Authority considers appropriate.”

(5) For subsection (4) substitute—

“(4) The Secretary of State shall not make regulations by virtue of any of the provisions specified in subsection (4A) unless a draft has been laid before and approved by a resolution of each House of Parliament.

(4A) Those provisions are—

- section 1(6);
- section 3(3)(c);
- section 3ZA(5);
- section 4(2) or (3);
- section 4A(5) or (11);
- section 20A(3);
- section 20B(2);
- section 24(4B);
- section 31ZA(2)(a);
- section 33C;
- section 33D;
- section 35A;
- section 43;
- paragraph 1(1)(g), 1ZC or 3A(1)(c) of Schedule 2.”

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(6) In subsection (5), after “regulations” insert “ made by the Secretary of State ”.

31 Power to make consequential provision

After section 45 of the 1990 Act (regulations) insert—

“45A Power to make consequential provision

- (1) The Secretary of State may by order make such provision modifying any provision made by or under any enactment as the Secretary of State considers necessary or expedient in consequence of any provision made by regulations under any of the relevant provisions of this Act.
- (2) For the purposes of subsection (1), “the relevant provisions of this Act” are—
 - (a) section 1(6) (power to include things within the meaning of “embryo” and “gametes” etc.);
 - (b) section 4A(11) (power to amend definition of “human admixed embryo” and other terms).
- (3) 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.
- (4) 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 a Measure of the Assembly (or, if the order is made after the Assembly Act provisions come into force, an Act of the Assembly), the Secretary of State must consult the Welsh Ministers.
- (5) 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.
- (6) In this section—

“enactment” means—

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

whenever passed or made;

“modify” includes amend, add to, revoke or repeal;

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

32 Orders under the 1990 Act

After section 45A (inserted by section 31 above) insert—

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“45B Orders

- (1) The power to make an order under section 8C(1)(c) or 45A of this Act shall be exercisable by statutory instrument.
- (2) The power to make an order under section 8C(1)(c) or 45A of this Act includes power to make such transitional, incidental or supplemental provision as the Secretary of State considers appropriate.
- (3) A statutory instrument containing an order made by the Secretary of State by virtue of section 8C(1)(c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The Secretary of State shall not make an order by virtue of section 45A unless a draft has been laid before and approved by a resolution of each House of Parliament.”

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