Draft Regulations laid before Parliament under section 62(4) of the Human Fertilisation and Embryology Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. 000

HUMAN FERTILISATION AND EMBRYOLOGY

The Human Fertilisation and Embryology (Parental Orders) Regulations 2010

Made - - - -	*000*
Coming into force - -	*6th April 2010*

The Secretary of State for Health makes these Regulations in exercise of the powers conferred by sections 55 and 61 of the Human Fertilisation and Embryology Act 2008(**1**).

A draft of this instrument was laid before Parliament in accordance with section 62(4) of that Act and approved by a resolution of each House of Parliament.

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Human Fertilisation and Embryology (Parental Orders) Regulations 2010 and shall come into force on 6th April 2010.

(2) Any provision of these Regulations which applies or modifies an enactment has the same extent as the enactment to which it relates.

(3) Subject to paragraph (2), these Regulations extend to England and Wales, Scotland and Northern Ireland.

(4) In these Regulations—

"the 2002 Act" means the Adoption and Children Act 2002(**2**);

"the 2007 Act" means the Adoption and Children (Scotland) Act 2007(**3**);

"the 2008 Act" means the Human Fertilisation and Embryology Act 2008; and

"the 1987 Order" means the Adoption (Northern Ireland) Order 1987(**4**).

(5) In these Regulations, and in any provision that is applied with modifications by regulation 2, 3 or 4 and Schedule 1, 2 or 3, "parental order" means an order under section 54 of the 2008 Act

(**1**) 2008 c.22.
(**2**) 2002 c.38.
(**3**) 2007 asp 4.
(**4**) S.I. 1987/2203 (N.I.22).

(parental orders) and, for the purposes of the provisions specified in paragraph (6), also includes an order under section 30 of the Human Fertilisation and Embryology Act 1990(**5**) (parental orders).

(6) The provisions referred to in paragraph (5) are—

(a) sections 60, 77 to 82 of, and Schedule 1 to, the 2002 Act, as applied with modifications by regulation 2 and Schedule 1;

(b) Articles 50 to 54 of, and Schedule 2 to, the 1987 Order, as applied with modifications by regulation 3 and Schedule 2;

(c) sections 53 to 57 of, and Schedule 1 to, the 2007 Act, as applied with modifications by regulation 4 and Schedule 3; and

(d) paragraphs 1, 13, 17, 18 and 20 of Schedule 4 to these Regulations.

Application of certain provisions of the 2002 Act subject to modifications

2. The provisions of the 2002 Act set out in column 1 of Schedule 1 have effect in relation to parental orders made in England and Wales and applications for such orders as they have effect in relation to adoption orders and applications for such orders, subject to the modifications set out in column 2 of that Schedule.

Application of certain provisions of the 1987 Order subject to modifications

3. The provisions of the 1987 Order set out in column 1 of Schedule 2 have effect in relation to parental orders made in Northern Ireland and applications for such orders as they have effect in relation to adoption orders and applications for such orders, subject to the modifications set out in column 2 of that Schedule.

Application of certain provisions of the 2007 Act subject to modifications

4. The provisions of the 2007 Act set out in column 1 of Schedule 3 have effect in relation to parental orders made in Scotland and applications for such orders as they have effect in relation to adoption orders and applications for such orders, subject to the modifications set out in column 2 of that Schedule.

References in enactments to be read as references to parental orders etc.

5. In the enactments mentioned in column 1 of Schedule 4, the references mentioned in column 2 of that Schedule (which relate to adoption, adopted children or an adoptive relationship) are to be read as provided for in column 2.

Appeals: England and Wales

6. In section 94 of the Children Act 1989(**6**) (which relates to appeals from decisions of a magistrates' court in England and Wales) any reference to an order under the 2002 Act is to be read as including a reference to—

(a) a parental order; and

(b) an order under any provision of the 2002 Act as applied by regulation 2 and Schedule 1.

(**5**) 1990 c.37; section 30 was amended by the Adoption and Children (Scotland) Act 2007 (asp 4), section 120(1) and (2) and schedule 2 paragraph 6 and Schedule 3.

(**6**) 1989 c.41; section 94 was amended by the Courts and Legal Services Act 1990 (c.41), section 116 and Schedule 16 paragraph 23; the Adoption and Children Act 2002 (c.38), section 100; Constitutional Reform Act 2005 (c.4), section 15(1) and Schedule 4, Part 1, paragraphs 203, 206(1), (2) and (3); and by S.I. 2009/871.

Family Proceedings Rules: England and Wales

7. Until section 75 of the Courts Act 2003(**7**) (Family Procedure Rules) comes into force in relation to parental orders, section 141 of the 2002 Act as applied by regulation 2 and Schedule 1 is to have effect as if—

(a) in subsection (1), the reference to Family Procedure Rules were a reference to rules of court made under section 40 of the Matrimonial and Family Proceedings Act 1984(**8**); and

(b) that subsection did not apply in relation to proceedings before Magistrates' Courts, but the powers to make rules conferred by section 144 of the Magistrates' Courts Act 1980(**9**) included powers to make provision in respect of any of the matters mentioned in that subsection.

Signed by authority of the Secretary of State for Health.

Name
Minister of State,
Department of Health

Date

(**7**) 2003 c.39.

(**8**) Section 40 is prospectively repealed by the Courts Act 2003 (c.39), section 109(1) and (3), Schedule 8, paragraph 278(a) and Schedule 10. Section 40 was amended by the Courts and Legal Services Act 1990 (c.41), section 125(3) and Schedule 18, paragraph 50; the Civil Procedure Act 1997 (c.12), section 10 and Schedule 2, paragraph 3(a); the Adoption and Children Act 2002 (c.39), section 139(1) and (3), Schedule 3, paragraph 44 and Schedule 5; the Children Act 2004 (c.31), section 62(5); the Civil Partnership Act 2004 (c.33), section 261(1) and Schedule 27, paragraph 95; the Constitutional Reform Act 2005 (c.4), sections 12(2), 15(1), 59(5), 146, Schedule 1, Part 2, paragraph 18(a) and (b), Schedule 4, Part 2, paragraphs 379, 380(1) to (4), Schedule 11, Part 1, paragraph 1(2), Part 2, paragraph 4(1) and (3), Schedule 18, Part 1 and Part 2; and by S.I. 2005/2744.

(**9**) Section 144 was amended by the Courts and Legal Services Act 1990 (c.41), section 125(3) and Schedule 18, paragraph 25; the Access to Justice Act 1999 (c.22), section 78(2), Schedule 11, paragraphs 26 and 29; the Courts Act 2003 (c.39), section 109(1) and (3), Schedule 8, paragraph 245(1) to (5) and Schedule 10; the Constitutional Reform Act 2005 (c.4), sections 15(1), 59(5), Schedule 4, Part 1, paragraphs 99, 102(1), (2), (3)(a), (3)(b), and (4) to (6), Schedule 11, Part 2, paragraph 4(1) and (3); and the Legal Services Act 2007 (c.29), section 208(1), Schedule 21, paragraphs 42, 43(a) and (b).

SCHEDULE 1 Regulation 2

Application of Adoption and Children Act 2002 Provisions with Modifications to Parental Orders and Applications for such Orders

Column 1	***Column 2***
Provisions of the 2002 Act	Modifications
Section 1 (considerations applying to the exercise of powers)	(i) As if the words "or adoption agency" were omitted on each occasion they appear; (ii) as if in section 1(1) for "the adoption of" there were substituted "the making of a parental order in relation to"; (iii) as if in section 1(4) the words "or agency" were omitted on each occasion they appear; (iv) as if in section 1(4)(c) for "an adopted person" there were substituted "the subject of a parental order"; (v) as if in section 1(4)(f) the words from "including" to "regarding the child" were omitted; (vi) as if section 1(5) were omitted; (vii) as if in section 1(6) after "whether" there were inserted "under section 54 of the Human Fertilisation and Embryology Act 2008,", as if after the words "this Act" on the first occasion they appear there were inserted "as applied with modifications by regulation 2 of and Schedule 1 to the Parental Order Regulations"(**10**) and as if for "any order under this Act" there were substituted "an order under that section or under this Act as so applied"; (viii) as if in section 1(7) for "the adoption of" there were substituted "the making of a parental order in relation to"; (ix) as if for the words in section 1(7)(a) from "include" to "variation of such an order)," there were substituted "include a parental order (or the revocation of such an order),"; and

(**10**) see the application of section 144 with modifications for the definition of the "Parental Order Regulations".

Column 1	***Column 2***
	(x) as if in section 1(7)(b) the words "adoption agency or" were omitted.
Section 2(5) (basic definitions)	
Section 36(1), (4), (6) and (7) (restrictions on removal)	(i) As if in section 36(1) the words from "("the people concerned")" to "people concerned" were omitted; (ii) as if for section 36(1)(a) there were substituted "(a) who have applied for a parental order in respect of the child and the application has not been disposed of,"; (iii) as if section 36(1)(b) and (c) were omitted; (iv) as if in section 36(1) for the words from "group of sections" to "Northern Irish adoption agency" there were substituted "section and section 37 as applied with modifications by regulation 2 of and Schedule 1 to the Parental Order Regulations"; (v) as if in section 36(4) for "This section" there were substituted "In the case of an application for a parental order under section 54(11) of the Human Fertilisation and Embryology Act 2008 this section,"; (vi) as if section 36(6)(a) were omitted; (vii) as if in section 36(6)(b) after "this section," there were inserted "as applied with modifications by regulation 2 of and Schedule 1 to the Parental Order Regulations"; and (viii) as if in section 36(7) for "This group of sections applies" there were substituted "This section and section 37, as applied with modifications by regulation 2 of and Schedule 1 to the Parental Order Regulations, apply".
Section 37 (applicants for adoption)	As if after "section 36(1)(a)," there were inserted "as applied with modifications by regulation 2 of and Schedule 1 to the Parental Order Regulations".
Section 41 (recovery orders)	(i) As if in section 41(1)(a) for "any of the preceding provisions of this Chapter" there were substituted "section 36 or 37 as applied with modifications by regulation 2 of and Schedule 1 to the Parental Order Regulations";