Draft Order laid before Parliament under section 62(3) of the Human Fertilisation and Embryology Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. 00

HUMAN FERTILISATION AND EMBRYOLOGY

The Human Fertilisation and Embryology (Consequential Amendments and Transitional and Saving Provisions) Order 2009

Made - - - -	*2009*
Coming into force	
for the purposes of article 2 and Schedules 1 and 2	*1st September 2009*
for all other purposes	*1st October 2009*

The Secretary of State in exercise of the powers conferred by sections 61 and 64 of the Human Fertilisation and Embryology Act 2008(**1**) makes the following Order:

Citation, coming into force, extent and interpretation

1.—(1) This Order may be cited as the Human Fertilisation and Embryology (Consequential Amendments and Transitional and Saving Provisions) Order 2009 and shall come into force—

(a) for the purposes of article 2 and Schedules 1 and 2, on 1st September 2009; and

(b) for all other purposes, on 1st October 2009.

(2) Subject to paragraph (3), this Order extends to England, Wales, Scotland and Northern Ireland.

(3) Any amendment made by this Order shall have the same extent as the enactment to which it relates.

(4) In this Order,

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

"the 1990 Act" means the Human Fertilisation and Embryology Act 1990(**2**); and

"the Authority" means the Human Fertilisation and Embryology Authority.

(**1**) 2008 c. 22.
(**2**) 1990 c. 37.

Consequential amendments relating to parenthood provisions

2. Schedules 1 and 2 (which make consequential amendments relating to parenthood) shall have effect.

Other consequential amendments

3. Schedule 3 (which makes consequential amendments other than in relation to parenthood) shall have effect.

Transitional and saving provisions

4. Schedule 4 (which makes transitional and saving provisions) shall have effect.

Signed by authority of the Secretary of State for Health

Name
Minister of State
Date Department of Health

SCHEDULE 1 Article 2

Consequential Amendments Relating to Parenthood

PART 1

Amendments to Primary legislation

Marriage (Scotland) Act 1977

1. In section 2 of the Marriage (Scotland) Act 1977(**3**) (marriage of related persons), after subsection (7) insert—

"(7A) This section and Schedule 1 to this Act have effect as if any reference in paragraphs 1 and 2 of that Schedule to a mother within any of the degrees of relationship specified in either column included a woman who is a parent of a child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008 (c. 22).".

Children Act 1989

2. In section 104 of the Children Act 1989(**4**) (regulations and orders), in subsection (3A), after "4(1B)" insert ", 4ZA(3)".

Human Fertilisation and Embryology Act 1990

3. In section 30 of the 1990 Act (parental orders in favour of gamete donors), as it has effect until the coming into force of its repeal by the 2008 Act, for subsection (5) substitute—

"(5) The court must be satisfied that both—

(a) the father of the child (including a person who is the father by virtue of section 28 of this Act or section 35 or 36 of the Human Fertilisation and Embryology Act 2008), where he is not the husband, or any woman who is a parent of the child by virtue of section 42 or 43 of that Act, and

(b) the woman who carried the child,

have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.".

Civil Partnership Act 2004

4. In section 86 of the Civil Partnership Act 2004(**5**) (eligibility), after subsection (5) insert—

"(5A) This section and Schedule 10 have effect as if any reference in that Schedule to a mother within any of the degrees of relationship specified in either column included a woman who is a parent of a child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008 (c. 22).".

(**3**) 1977 c. 15. Section 2 was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), sections 9 and 10, Schedule 1, paragraph 17 and Schedule 2; the Marriage (Prohibited Degrees of Relationship) Act 1986 (c. 16), section 2, Schedule 2, paragraph 2; the Gender Recognition Act 2004 (c. 7), Schedule 4, paragraph 7; the Family Law (Scotland) Act 2006 (asp 2), section 1(a) and S.S.I. 2006/384, article 4.

(**4**) 1989 c. 41. Section 104(3A) was inserted by the Children and Young Persons Act 2008 (c. 23), section 39 and Schedule 3 paragraphs 1, 25(1) and (4). Section 4ZA(3) was inserted by the Human Fertilisation and Embryology Act 2008 Act (c. 22), section 56, Schedule 6, Part 1, paragraph 27.

(**5**) 2004 c. 33. Section 86 was amended by the Family Law (Scotland) Act 2006 (asp 2), Schedule 1, paragraph 2 and Schedule 3.

PART 2

Amendments to Secondary legislation

Civil Aviation (Births Deaths and Missing Persons) Regulations 1948

5.—(1) The Civil Aviation (Births Deaths and Missing Persons) Regulations 1948(**6**) are amended as follows.

(2) In regulation 2 (interpretation) after the definition of "Person in command" insert—

""second female parent" means the woman who is a parent of the child by virtue of—

(a) section 42 of the Human Fertilisation and Embryology Act 2008(**7**) (which relates to treatment provided to a woman who is at the time of treatment a party to a civil partnership or, in certain circumstances a void civil partnership); or

(b) section 43 of that Act (which relates to treatment provided to a woman who agrees that second woman to be parent) where the woman—

(i) is the civil partner of the child's mother at the time of the child's birth, or

(ii) was the civil partner of the child's mother at any time during the period beginning with the time mentioned in section 43(b) of that Act and ending with the child's birth;".

(3) For regulation 8 (saving for father of illegitimate child) substitute—

"**Saving in relation to an illegitimate child**

8.—(1) In the case of the birth of an illegitimate child, the name of any person as father of that child shall not be entered in any return or record of particulars of the birth of that child unless the mother of the child and the father shall have signed a completed form of return as informants.

(2) In the case of the birth of an illegitimate child, the name of any woman (other than the mother) as a parent of that child shall not be entered in any return or record of particulars of the birth of that child unless the mother of the child and that woman shall have signed a completed form of return as informants.

(3) Paragraph (2) only applies to a woman who is a parent of a child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and who does not fall within the definition of second female parent.".

(4) Appendix A shall be amended as follows—

(a) for "father" in entries 6 and 9 substitute "father or woman who is a parent of the child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008";

(b) for entry 8 substitute—

"**8. Date and place of marriage or civil partnership of parents";**

(c) for note (e) substitute—

"(e) Christian names in full and followed by surname; surname to be written in block letters. If the child is illegitimate (see (8) above) the particulars of the father or woman who is a parent of the child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 shall not be recorded in the return unless at the joint request of the mother and the father or other parent

(**6**) S.I. 1948/1411, relevant amending instrument is S.I. 1972/323.
(**7**) 2008 c. 22.

of the child, in which case, that person and the mother, shall sign a completed form of return as informant."; and

(d) at the end for "(usually the mother or father)" substitute "(mother or father or second female parent)".

(5) In Appendix B, in note (g) for "father" (in both places where it appears) substitute "father or woman who is a parent by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008".

(6) In Appendix C in columns 5 and 7, after "father" insert "or woman who is a parent by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008".

Hovercraft (Births Deaths and Missing Persons) Regulations 1972

6.—(1) The Hovercraft (Births Deaths and Missing Persons) Regulations 1972(**8**) are amended as follows.

(2) In paragraph (1) of regulation 2 (interpretation) after the definition of "Person in command" insert—

""second female parent" means the woman who is a parent of the child by virtue of—

(a) section 42 of the Human Fertilisation and Embryology Act 2008(**9**) (which relates to treatment provided to a woman who is at the time of treatment a party to a civil partnership or, in certain circumstances a void civil partnership); or

(b) section 43 of that Act (which relates to treatment provided to a woman who agrees that second woman to be parent) where the woman—

(i) is the civil partner of the child's mother at the time of the child's birth, or

(ii) was the civil partner of the child's mother at any time during the period beginning with the time mentioned in section 43(b) of that Act and ending with the child's birth.".

(3) In paragraph (a) of regulation 6 (rules for ascertaining appropriate Registrar-General) after "father" insert "or second female parent".

(4) For regulation 7 (saving for father of illegitimate child) substitute—

"**Saving in relation to an illegitimate child**

7.—(1) In the case of the birth of an illegitimate child, the name of any person as father of that child shall not be entered in any return or record of particulars of the birth of that child unless the mother of the child and the father shall have signed a completed form of return as informants.

(2) In the case of the birth of an illegitimate child, the name of any woman (other than the mother) as a parent of that child shall not be entered in any return or record of particulars of the birth of that child unless the mother of the child and that woman shall have signed a completed form of return as informants.

(3) Paragraph (2) only applies to a woman who is a parent of a child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and who does not fall within the definition of second female parent.".

(5) Appendix A shall be amended as follows—

(**8**) S.I. 1972/1513.
(**9**) 2008 c. 22.