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HUMAN FERTILISATION AND EMBRYOLOGY BILL 2022

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HUMAN FERTILISATION AND EMBRYOLOGY BILL 2022

A BILL to make certain new provision in relation to fertilisation, embryology and surrogacy; to make new provision about the persons who in certain circumstances are to be treated as the parents of a child; to amend the Civil Registration Act 1984 consequentially in relation to registering births; and for connected purposes.

BE IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Human Fertilisation and Embryology Act 2022.

2 Commencement

- (1) This Act, apart from section 1, this section and the definition of “Department” in section 4(1), comes into operation on such day or days as the Department may by order appoint.
- (2) An order under subsection (1) may include such supplemental, incidental, consequential and transitional provisions as appear to the Department to be necessary or expedient.

3 Meaning of “embryo”, “gamete” and associated expressions

P1990/37/1 and drafting

- (1) In this Act (except in section 12 or in the term “human admixed embryo”) —
 - (a) embryo means a live human embryo and does not include a human admixed embryo (as defined by section 12(6)); and
 - (b) references to an embryo include an egg that is in the process of fertilisation or is undergoing any other process capable of resulting in an embryo.
- (2) This Act, so far as it governs bringing about the creation of an embryo, applies only to bringing about the creation of an embryo outside the human body; and in this Act —
 - (a) references to embryos the creation of which was brought about *in vitro* (in their application to those where fertilisation or any other

process by which an embryo is created is complete) are to those where fertilisation or any other process by which the embryo was created began outside the human body whether or not it was completed there; and

- (b) references to embryos taken from a woman do not include embryos whose creation was brought about *in vitro*.
- (3) This Act, so far as it governs the keeping or use of an embryo, applies only to keeping or using an embryo outside the human body.
- (4) In this Act (except in section 12) —
- (a) references to eggs are to live human eggs, including cells of the female germ line at any stage of maturity, but (except in subsection (1)(b)) not including eggs that are in the process of fertilisation or are undergoing any other process capable of resulting in an embryo;
 - (b) references to sperm are to human sperm, including cells of the male germ line at any stage of maturity; and
 - (c) references to gametes are to be read accordingly.
- (5) For the purposes of this Act, sperm is to be treated as partner-donated sperm if the donor of the sperm and the recipient of the sperm declare that they have an intimate physical relationship.
- (6) If it appears to the Department necessary or desirable to do so in the light of developments in science or medicine, the Department may by regulations provide that in this Act (except in section 12) “embryo”, “eggs”, “sperm” or “gametes” includes things specified in the regulations which would not otherwise fall within the definition.
- Tynwald procedure –approval required.
- (7) Regulations made by virtue of subsection (6) may not provide for anything containing any nuclear or mitochondrial DNA that is not human to be treated as an embryo or as eggs, sperm or gametes.

4 Interpretation: other terms

- (1) In this Act —
- “**conception services**” means medical, surgical or obstetric services provided for the purpose of assisting women to conceive;
- “**Department**” means the Department of Health and Social Care;
- “**embryo**” has the meaning given by section 3;
- “**female germ cells**” means cells of the female germ line and includes such cells at any stage of maturity and accordingly includes eggs;
- “**human admixed embryo**” has the meaning given by section 12(6);
- “**human application**” means use in a human recipient;
- “**licence**” means a licence issued pursuant to an order under section 14;
- “**non-medical conception services**” means any services that are provided, in the course of a business, for the purpose of assisting women to conceive, but are not medical, surgical or obstetric services;
- “**payment**” means payment in money or money’s worth;

“**person responsible**”, in relation to a licence, is to be construed in accordance with section 17 of the Human Fertilisation and Embryology Act 1990 (of Parliament);

“**processing**”, in relation to gametes or embryos intended for human application, means any operation involved in their preparation, manipulation or packaging, and related terms are to be interpreted accordingly;

“**prohibited degrees of relationship**” has the meaning given by section 17;

“**store**”, in relation to gametes, embryos or human admixed embryos, means preserve, whether by cryopreservation or in any other way, and “storage” and “stored” are to be interpreted accordingly.

- (2) References in Part 2 to keeping, in relation to embryos, gametes or human admixed embryos, include keeping while preserved in storage.
- (3) For the purposes of this Act, a woman is not to be treated as carrying a child until the embryo has become implanted.

5 Conscientious objection

P1990/37/38

- (1) No person who has a conscientious objection to participating in any activity governed by this Act shall be under any duty, however arising, to do so.
- (2) In any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.

PART 2 – HUMAN FERTILISATION AND EMBRYOLOGY

Departmental functions and procedure

6 General functions of the Department

P1990/37/8 and drafting

- (1) In this Part, activities regulated by this sections 8 to 12 are referred to as “activities governed by this Part”.
- (2) The Department shall —
 - (a) keep under review information about embryos and any subsequent development of embryos and about the provision of conception services and activities governed by this Part;
 - (b) publicise the services provided to the public by the Department or provided in pursuance of licences;
 - (c) provide, to such extent as it considers appropriate, advice and information for persons to whom licences apply or who are receiving conception services or providing gametes or embryos for use for the purposes of activities governed by this Part, or may wish to do so;
 - (d) maintain a statement of the general principles which it considers should be followed —
 - (i) in the carrying-on of activities governed by this Part; and

- (ii) in the carrying-out of its functions in relation to such activities;
- (e) promote, in relation to activities governed by this Part, compliance with —
 - (i) requirements imposed by or under this Act; and
 - (ii) the code of practice under section 7; and
- (f) perform such other functions as may be specified in regulations made by the Department.

Tynwald procedure – approval required.
- (3) The Department may, if it thinks fit, charge a fee for any advice provided under subsection (2)(c).
- (4) The Department shall carry out its functions effectively, efficiently and economically.
- (5) In carrying out its functions, the Department shall, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed).

7 Code of practice

P1990/37/25 and drafting

- (1) The Department shall maintain a code of practice giving guidance about the proper conduct of activities carried on in pursuance of a licence under this Part and the proper discharge of the functions of the person responsible and other persons to whom the licence applies.

Tynwald procedure – laying only.
- (2) The guidance given by the code shall include guidance for those providing conception services about the account to be taken of the welfare of children who may be born as a result of conception services (including a child's need for supportive parenting), and of other children who may be affected by such births.
- (3) The code shall also give guidance about —
 - (a) the giving of a suitable opportunity to receive proper counselling; and
 - (b) the provision of such relevant information as is proper, in accordance with a licence granted in accordance with section 14(1).
- (4) The code may also give guidance about the use of any technique involving the placing of sperm and eggs in a woman.
- (5) The Department may from time to time revise the whole or any part of the code.

Tynwald procedure – laying only.
- (6) The Department shall publish the code as for the time being in operation.
- (7) A failure on the part of any person to observe any provision of the code shall not of itself render the person liable to any proceedings, but —

- (a) the Department shall, in considering whether there has been any failure to comply with any conditions of a licence and, in particular, conditions requiring anything to be “proper” or “suitable”, take account of any relevant provision of the code; and
- (b) the Department may, in considering, where it has power to do so, whether or not to vary or revoke a licence, take into account any observance of or failure to observe the provisions of the code.

Activities governed by this Part

8 Prohibitions in connection with embryos

P1990/37/3 and drafting

- (1) No person shall bring about the creation of an embryo except in pursuance of a licence.
 - (2) No person shall keep or use an embryo except in pursuance of a licence.
 - (3) No person shall procure or distribute an embryo intended for human application except in pursuance of a licence.
 - (4) No person shall place in a woman —
 - (a) an embryo other than a permitted embryo (as defined by section 9); or
 - (b) any gametes other than permitted eggs or permitted sperm (as defined in section 9).
 - (5) A licence cannot authorise —
 - (a) keeping or using an embryo after the appearance of the primitive streak;
 - (b) placing an embryo in any animal; or
 - (c) keeping or using an embryo in any circumstances in which regulations prohibit its keeping or use.
 - (6) For the purposes of subsection (5)(a), the primitive streak is to be taken to have appeared in an embryo not later than the end of the period of 14 days beginning with the day on which the process of creating the embryo began, not counting any time during which the embryo is stored.
 - (7) If it appears to the Department necessary or desirable to do so in the light of developments in science or medicine, the Department may by regulations vary the period of days specified in subsection (6).
- Tynwald procedure – approval required.

9 Permitted eggs, permitted sperm and permitted embryos

P1990/37/3ZA and drafting

- (1) This section has effect for the interpretation of section 8(4).
- (2) A permitted egg is one —
 - (a) which has been produced by or extracted from the ovaries of a woman; and
 - (b) whose nuclear or mitochondrial DNA has not been altered.

- (3) Permitted sperm are sperm —
- (a) which have been produced by or extracted from the testes of a man; and
 - (b) whose nuclear or mitochondrial DNA has not been altered.
- (4) An embryo is a permitted embryo if —
- (a) it has been created by the fertilisation of a permitted egg by permitted sperm;
 - (b) no nuclear or mitochondrial DNA of any cell of the embryo has been altered; and
 - (c) no cell has been added to it other than by division of the embryo's own cells.
- (5) The Department may by regulations provide that —
- (a) an egg can be a permitted egg; or
 - (b) an embryo can be a permitted embryo,
- even though the egg or embryo has had applied to it in prescribed circumstances a prescribed process designed to prevent the transmission of serious mitochondrial disease.
- Tynwald procedure – approval required.
- (6) In this section —
- (a) “woman” and “man” include respectively a girl and a boy (from birth); and
 - (b) “prescribed” means prescribed by regulations made under subsection (5).

10 Prohibition in connection with germ cells

P1990/37/3A and drafting

No person shall, for the purpose of providing conception services for any woman, use female germ cells taken or derived from an embryo or a foetus or use embryos created by using such cells.

11 Prohibitions in connection with gametes

P1990/37/4 and drafting

- (1) No person shall —
- (a) store any gametes; or
 - (b) in the course of providing conception services for any woman, use —
 - (i) any sperm, other than partner-donated sperm which has been neither processed nor stored;
 - (ii) the woman's eggs after processing or storage; or
 - (iii) the eggs of any other woman,except in pursuance of a licence.
- (2) No person shall procure, test, process or distribute any gametes intended for human application except in pursuance of a licence.

- (3) A licence cannot authorise storing or using gametes in any circumstances in which regulations prohibit their storage or use.
- (4) No person shall place sperm and eggs in a woman in any circumstances specified in regulations except in pursuance of a licence.

12 Prohibitions in connection with genetic material not of human origin

P1990/37/4A and drafting

- (1) No person shall place in a woman —
 - (a) a human admixed embryo;
 - (b) any other embryo that is not a human embryo; or
 - (c) any gametes other than human gametes.
- (2) No person shall —
 - (a) mix human gametes with animal gametes;
 - (b) bring about the creation of a human admixed embryo; or
 - (c) keep or use a human admixed embryo,except in pursuance of a licence.
- (3) A licence cannot authorise keeping or using a human admixed embryo after the earliest of the following —
 - (a) the appearance of the primitive streak; or
 - (b) the end of the period of 14 days beginning with the day on which the process of creating the human admixed embryo began, but not counting any time during which the human admixed embryo is stored.
- (4) A licence cannot authorise placing a human admixed embryo in an animal.
- (5) A licence cannot authorise keeping or using a human admixed embryo in any circumstances in which regulations prohibit its keeping or use.
- (6) For the purposes of this Act a human admixed embryo is —
 - (a) an embryo created by replacing the nucleus of an animal egg or of an animal cell, or two animal pronuclei, with —
 - (i) two human pronuclei;
 - (ii) one nucleus of a human gamete or of any other human cell; or
 - (iii) one human gamete or other human cell;
 - (b) any other embryo created by using —
 - (i) human gametes and animal gametes; or
 - (ii) one human pronucleus and one animal pronucleus;
 - (c) a human embryo that has been altered by the introduction of any sequence of nuclear or mitochondrial DNA of an animal into one or more cells of the embryo;
 - (d) a human embryo that has been altered by the introduction of one or more animal cells; or
 - (e) any embryo not falling within paragraphs (a) to (d) which contains both nuclear or mitochondrial DNA of a human and nuclear or

mitochondrial DNA of an animal (“animal DNA”) but in which the animal DNA is not predominant.

- (7) In subsection (6) —
- (a) references to animal cells are to cells of an animal or of an animal embryo; and
 - (b) references to human cells are to cells of a human or of a human embryo.
- (8) For the purposes of this section an “animal” is an animal other than a human.
- (9) In this section “embryo” means a live embryo, including an egg that is in the process of fertilisation or is undergoing any other process capable of resulting in an embryo.
- (10) In this section —
- (a) references to eggs are to live eggs, including cells of the female germ line at any stage of maturity, but (except in subsection (9)) not including eggs that are in the process of fertilisation or are undergoing any other process capable of resulting in an embryo; and
 - (b) references to gametes are to eggs (as so defined) or to sperm, including cells of the male germ line at any stage of maturity.
- (11) If it appears to the Department necessary or desirable to do so in the light of developments in science or medicine, the Department may by regulations do any of the following —
- (a) vary the period of days specified in subsection (3)(b);
 - (b) amend (but not repeal) paragraphs (a) to (e) of subsection (6);
 - (c) provide that in this section “embryo”, “eggs” or “gametes” includes things specified in the regulations which would not otherwise fall within the definition.
- Tynwald procedure – approval required.
- (12) Regulations made by virtue of subsection (11)(b) may make any amendment of subsection (7) that appears to the Department to be appropriate in consequence of any amendment of subsection (6).

Offences

13 Offences under Part 2

P1990/37/41 and drafting

- (1) A person who—
- (a) contravenes section 8(4), 10 or 12(1) or (2); or
 - (b) does anything which, by virtue of section 8(5), cannot be authorised by a licence,
- is guilty of an offence and liable on conviction on information to custody for a term not exceeding ten years or a fine, or to both.
- (2) A person who—
- (a) contravenes section 8(1) or (2), otherwise than by doing something which, by virtue of section 8(5), cannot be authorised by a licence;

- (b) contravenes section 8(3);
 - (c) keeps any gametes in contravention of section 11(1)(a);
 - (d) uses any gametes in contravention of section 11(1)(b);
 - (e) contravenes section 11(2); or
 - (f) contravenes section 11(4),
- 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 the person knows the information to be false or misleading in a material particular or the person provides the information recklessly,
- the person is guilty of an offence.
- (4) A person guilty of an offence under subsection (2) or (3) is liable—
- (a) on conviction on indictment, to custody for a term not exceeding 2 years or a fine, or to both; and
 - (b) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding the level 5 on the standard scale, or to both.
- (5) In relation to an offence under this Part, section 75(1) of the *Summary Jurisdiction Act 1989* (time-limit for summary proceedings) applies with the substitution for “6 months” of “2 years”.
- (6) It is a defence for a person (“the defendant”) charged with an offence of doing anything which, under this Part, 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 issued under this Part; and
 - (ii) that the defendant was authorised by virtue of the licence to do the thing in question.
- (7) It is a defence for a person charged with an offence under this Part to prove —
- (a) that at the material time the person was a person to whom a licence issued under this Part applied; and
 - (b) that the person took all such steps as were reasonable and exercised all due diligence to avoid committing the offence.

*Miscellaneous enabling provisions***14 Provision for licensing of certain activities**

2001/20/85 and drafting

- (1) The Department may by order provide for the licensing of any of the activities specified in —
- (a) section 8(1), (2) or (3);
 - (b) section 11(1), (2) or (4); or
 - (c) section 12(2).

Tynwald procedure – approval required.

- (2) In any proceedings for an offence under section 13(1) or (2) consisting in any of those activities, it is a defence for the person accused to show that the activity was carried on in pursuance of a licence granted in accordance with an order under subsection (1).

- (3) An order under subsection (1) may provide for the application to the Island, as part of the law of the Island, of any of the following legislation —

- (a) sections 11 to 26 of the Human Fertilisation and Embryology Act 1990 (of Parliament);
- (b) any provision of UK legislation amending, varying or modifying those sections, directly or indirectly;
- (c) any statutory instrument made or having effect as if made under that Act,

subject to such exceptions, adaptations and modifications as may be specified in the order.

- (4) An order under subsection (1) may either —

- (a) provide for the establishment of a body of persons with the function of licensing any activity mentioned in subsection (1), and with such advisory functions relating to those activities and any other activities mentioned in sections 8 to 13 as appear to the Department to be appropriate; or
- (b) confer such licensing and advisory functions on a body of persons established otherwise than by the order (including a body established in the United Kingdom).

- (5) An order under subsection (1) —

- (a) may make such transitional, consequential, incidental and supplemental provision as appears to the Department to be necessary or expedient for the purposes of the order; and
- (b) may repeal or amend any enactment (including an enactment contained in this Part, other than sections 8 to 13 and this section) appearing to the Department to be inconsistent with, or to have become unnecessary or to require amendment in consequence of, the order.

15 Mitochondrial donation

P1990/37/35A and drafting

- (1) The Department may by regulations provide for any of the relevant provisions to have effect subject to specified modifications in relation to cases where —
- (a) an egg which is a permitted egg for the purposes of section 9(2) by virtue of regulations made under section 9(5); or
 - (b) an embryo which is a permitted embryo for those purposes by virtue of such regulations,
- has been created from material provided by two women.
- Tynwald procedure – approval required.
- (2) In this section “the relevant provisions” means sections 39 and 40 (parental orders).

16 Keeping and examining gametes and embryos in connection with crime, etc.

P1990/37/43 and drafting

- (1) The Department may by regulations provide —
- (a) for the keeping and examination of gametes or embryos, in such manner and on such conditions (if any) as may be specified in regulations, in connection with the investigation of, or proceedings for, an offence (wherever committed); or
 - (b) for the storage of gametes, in such manner and on such conditions (if any) as may be specified in regulations, where they are to be used only for such purpose, other than conception services, as may be specified in regulations.
- Tynwald procedure – approval required.
- (2) Nothing in this Act makes unlawful the keeping or examination of any gametes or embryos in pursuance of regulations made by virtue of this section.
- (3) In this section “examination” includes use for the purposes of any test.

PART 3 – PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION

Prohibited degrees of relationship

17 Prohibited degrees of relationship

P2008/22/58(2)

For the purposes of this Part, two persons are within prohibited degrees of relationship if one is the other’s parent, grandparent, sister, brother, aunt or uncle; and in this subsection references to relationships —

- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would subsist but for adoption; and

- (b) include the relationship of a child with the child's adoptive, or former adoptive, parents,
but do not include any other adoptive relationships.

Meaning of "mother"

18 Meaning of "mother"

P2008/22/33 and drafting

- (1) The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child.
- (2) Subsection (1) does not apply to any child to the extent that the child is treated by virtue of adoption as not being the woman's child.
- (3) Subsection (1) applies whether the woman was in the Island or elsewhere at the time of the placing in her of the embryo or the sperm and eggs.

Application of sections 20 to 32

19 Application of sections 20 to 32

P2008/22/34 and drafting

- (1) Sections 20 to 32 apply, in the case of a child who is being or has been carried by a woman (referred to in those sections as "W") as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination, to determine who is to be treated as the other parent of the child.
- (2) Subsection (1) has effect subject to the provisions of sections 24, 25 and 31 limiting the purposes for which a person is treated as the child's other parent by virtue of those sections.

Meaning of "father"

20 Woman married to, or civil partner of, a man at time of treatment

P2008/22/35 and drafting

- (1) If —
 - (a) at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination, W was a party to a marriage with a man or a civil partnership with a man; and
 - (b) the creation of the embryo carried by her was not brought about with the sperm of the other party to the marriage or civil partnership,

then, subject to section 23(2) and (3), the other party to the marriage or civil partnership is to be treated as the father of the child unless it is shown that the person did not consent to the placing in her of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).

- (2) This section applies whether W was in the Island or elsewhere at the time mentioned in subsection (1)(a).

21 Treatment provided to woman where agreed fatherhood conditions apply

P2008/22/36 and drafting

If no man is treated by virtue of section 20 as the father of the child and no woman is treated by virtue of section 27 as a parent of the child but —

- (a) the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, in the course of conception services provided in the Island by a person to whom a licence applies;
- (b) at the time when the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, the agreed fatherhood conditions (as set out in section 22) were satisfied in relation to a man, in relation to treatment provided to W under the licence;
- (c) the man remained alive at that time; and
- (d) the creation of the embryo carried by W was not brought about with the man's sperm,

then, subject to section 23(2) and (3), the man is to be treated as the father of the child.

22 The agreed fatherhood conditions

P2008/22/37 and drafting

- (1) The agreed fatherhood conditions referred to in section 21(b) are met in relation to a man ("M") in relation to treatment provided to W under a licence if, but only if, —
 - (a) M has given the person responsible a notice stating that M consents to being treated as the father of any child resulting from treatment provided to W under the licence;
 - (b) W has given the person responsible a notice stating that she consents to M being so treated;
 - (c) neither M nor W has, since giving notice under paragraph (a) or (b), given the person responsible notice of the withdrawal of M's or W's consent to M being so treated;
 - (d) W has not, since the giving of the notice under paragraph (b), given the person responsible —
 - (i) a further notice under that paragraph stating that she consents to another man being treated as the father of any resulting child; or
 - (ii) a notice under section 29(1)(b) stating that she consents to a woman being treated as a parent of any resulting child; and
 - (e) W and M are not within prohibited degrees of relationship in relation to each other.
- (2) A notice under subsection (1)(a), (b) or (c) must be in writing and must be signed by the person giving it.
- (3) A notice under subsection (1)(a), (b) or (c) by a person ("S") who is unable to sign because of illness, injury or physical disability is to be taken to comply with the requirement of subsection (2) as to signature if it is signed at the direction of S, in the presence of S and in the presence of at least one witness who attests the signature.

23 Further provision relating to sections 20 and 21

P2008/22/38 and drafting

- (1) Where a person is to be treated as the father of the child by virtue of section 20 or 21, no other person is to be treated as the father of the child.
- (2) Sections 20 and 21 do not affect any presumption, applying by virtue of the rules of common law or the *Legitimacy Act 1985*, the *Civil Partnership Act 2011* or paragraph 2 of Schedule 2 to the *Civil Partnership (Amendment) Act 2016*, that a child is the legitimate child of the parties to a marriage or civil partnership.
- (3) Sections 20 and 21 do not apply to any child to the extent that the child is treated by virtue of adoption as not being the man's child.

24 Use of sperm, or transfer of embryo, after death of man providing sperm

P2008/22/39 and drafting

- (1) If —
 - (a) the child has been carried by W as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination;
 - (b) the creation of the embryo carried by W was brought about by using the sperm of a man after his death, or the creation of the embryo was brought about using the sperm of a man before his death but the embryo was placed in W after his death;
 - (c) the man consented in writing (and did not withdraw the consent) —
 - (i) to the use of his sperm after his death which brought about the creation of the embryo carried by W or (as the case may be) to the placing in W after his death of the embryo which was brought about using his sperm before his death; and
 - (ii) to being treated for the purpose mentioned in subsection (3) as the father of any resulting child,
 - (d) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the man to be treated for the purpose mentioned in subsection (3) as the father of the child; and
 - (e) no-one else is to be treated —
 - (i) as the father of the child by virtue of section 20 or 21 or by virtue of section 23(2) or (3); or
 - (ii) as a parent of the child by virtue of section 27 or 28 or by virtue of adoption,

then the man is to be treated for the purpose mentioned in subsection (3) as the father of the child.

- (2) Subsection (1) applies whether W was in the Island or elsewhere at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination.
- (3) The purpose referred to in subsection (1) is the purpose of enabling the man's particulars to be entered as the particulars of the child's father in a relevant register of births.

25 Embryo transferred after death of male spouse, civil partner or intended parent who did not provide sperm

P2008/22/40 and drafting

- (1) If —
- (a) the child has been carried by W as a result of the placing in her of an embryo;
 - (b) the embryo was created at a time when W was a party to a marriage with a man or a civil partnership with a man;
 - (c) the creation of the embryo was not brought about with the sperm of the other party to the marriage or civil partnership;
 - (d) the other party to the marriage or civil partnership died before the placing of the embryo in W;
 - (e) the other party to the marriage or civil partnership consented in writing (and did not withdraw the consent) —
 - (i) to the placing of the embryo in W after his death; and
 - (ii) to being treated for the purpose mentioned in subsection (4) as the father of any resulting child;
 - (f) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the man to be treated for the purpose mentioned in subsection (4) as the father of the child; and
 - (g) no-one else is to be treated —
 - (i) as the father of the child by virtue of section 20 or 21 or by virtue of section 23(2) or (3); or
 - (ii) as a parent of the child by virtue of section 27 or 28 or by virtue of adoption,

then the man is to be treated for the purpose mentioned in subsection (4) as the father of the child.

- (2) If —
- (a) the child has been carried by W as a result of the placing in her of an embryo;
 - (b) the embryo was not created at a time when W was a party to a marriage or a civil partnership but was created in the course of conception services provided to W by a person to whom a licence applies;
 - (c) a man consented in writing (and did not withdraw the consent) —
 - (i) to the placing of the embryo in W after his death; and
 - (ii) to being treated for the purpose mentioned in subsection (4) as the father of any resulting child;
 - (d) the creation of the embryo was not brought about with the sperm of that man;
 - (e) the man died before the placing of the embryo in W;
 - (f) immediately before the man's death, the agreed fatherhood conditions set out in section 22 were met in relation to the man in relation to treatment proposed to be provided to W by a person to whom a licence applies;

- (g) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the man to be treated for the purpose mentioned in subsection (4) as the father of the child; and
- (h) no-one else is to be treated —
 - (i) as the father of the child by virtue of section 20 or 21 or by virtue of section 23(2) or (3); or
 - (ii) as a parent of the child by virtue of section 27 or 28 or by virtue of adoption,

then the man is to be treated for the purpose mentioned in subsection (4) as the father of the child.

- (3) Subsections (1) and (2) apply whether W was in the Island or elsewhere at the time of the placing in her of the embryo.
- (4) The purpose referred to in subsections (1) and (2) is the purpose of enabling the man's particulars to be entered as the particulars of the child's father in a relevant register of births.

26 Persons not to be treated as father

P2008/22/41 and drafting

- (1) Where the sperm of a man who has consented to its use for the purposes of conception services or non-medical conception services is used for a purpose for which such consent was required, he is not to be treated as the father of the child.
- (2) Where the sperm of a man, or an embryo the creation of which was brought about with his sperm, was used after his death, he is not, subject to section 24, to be treated as the father of the child.
- (3) Subsection (2) applies whether W was in the Island or elsewhere at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination.

Cases in which woman to be other parent

27 Woman in marriage or civil partnership to a woman at time of treatment

P2008/22/42 and drafting

- (1) If at the time of the placing in her of the embryo or the sperm and eggs or of her artificial insemination, W was a party to a marriage with another woman or a civil partnership with another woman, then subject to section 30(2) and (3), the other party to the marriage or civil partnership is to be treated as a parent of the child unless it is shown that she did not consent to the placing in W of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).
- (2) This section applies whether W was in the Island or elsewhere at the time mentioned in subsection (1).

28 Treatment provided to woman who agrees that second woman to be parent

P2008/22/43 and drafting

If no man is treated by virtue of section 20 as the father of the child and no woman is treated by virtue of section 27 as a parent of the child but —

- (a) the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, in the course of conception services provided in the Island by a person to whom a licence applies;
- (b) at the time when the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, the agreed female parenthood conditions (as set out in section 29) were met in relation to another woman, in relation to treatment provided to W under that licence; and
- (c) the other woman remained alive at that time,

then, subject to section 30(2) and (3), the other woman is to be treated as a parent of the child.

29 The agreed female parenthood conditions

P2008/22/44 and drafting

- (1) The agreed female parenthood conditions referred to in section 28(b) are met in relation to another woman (“P”) in relation to treatment provided to W under a licence if, but only if, —
 - (a) P has given the person responsible a notice stating that P consents to P being treated as a parent of any child resulting from treatment provided to W under the licence;
 - (b) W has given the person responsible a notice stating that W agrees to P being so treated;
 - (c) neither W nor P has, since giving notice under paragraph (a) or (b), given the person responsible notice of the withdrawal of P’s or W’s consent to P being so treated;
 - (d) W has not, since the giving of the notice under paragraph (b), given the person responsible —
 - (i) a further notice under that paragraph stating that W consents to a woman other than P being treated as a parent of any resulting child; or
 - (ii) a notice under section 22(1)(b) stating that W consents to a man being treated as the father of any resulting child; and
 - (e) W and P are not within prohibited degrees of relationship in relation to each other.
- (2) A notice under subsection (1)(a), (b) or (c) must be in writing and must be signed by the person giving it.
- (3) A notice under subsection (1)(a), (b) or (c) by a person (“S”) who is unable to sign because of illness, injury or physical disability is to be taken to comply with the requirement of subsection (2) as to signature if it is signed at the direction of S, in the presence of S and in the presence of at least one witness who attests the signature.

30 Further provision relating to sections 27 and 28

P2008/22/45 and drafting

- (1) Where a woman is treated by virtue of section 27 or 28 as a parent of the child, no man is to be treated as the father of the child.
- (2) Sections 27 and 28 do not affect any presumption, applying by virtue of the rules of common law or the *Legitimacy Act 1985*, the *Civil Partnership Act 2011* or paragraph 2 of Schedule 2 to the *Civil Partnership (Amendment) Act 2016*, that a child is the legitimate child of the parties to a marriage or civil partnership.
- (3) Sections 27 and 28 do not apply to any child to the extent that the child is treated by virtue of adoption as not being the woman's child.

31 Embryo transferred after death of female spouse, civil partner or intended parent

P2008/22/46 and drafting

- (1) If —
 - (a) the child has been carried by W as the result of the placing in her of an embryo;
 - (b) the embryo was created at a time when W was a party to a marriage with a woman or a civil partnership with a woman;
 - (c) the other party to the marriage or civil partnership died before the placing of the embryo in W;
 - (d) the other party to the marriage or civil partnership consented in writing (and did not withdraw the consent) —
 - (i) to the placing of the embryo in W after the death of the other party; and
 - (ii) to being treated for the purpose mentioned in subsection (4) as the parent of any resulting child;
 - (e) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the other party to the marriage or civil partnership to be treated for the purpose mentioned in subsection (4) as the parent of the child; and
 - (f) no one else is to be treated —
 - (i) as the father of the child by virtue of section 20 or 21 or by virtue of section 30(2) or (3); or
 - (ii) as a parent of the child by virtue of section 27 or 28 or by virtue of adoption,

then the other party to the marriage or civil partnership is to be treated for the purpose mentioned in subsection (4) as a parent of the child.
- (2) If —
 - (a) the child has been carried by W as the result of the placing in her of an embryo;
 - (b) the embryo was not created at a time when W was a party to a marriage or a civil partnership, but was created in the course of conception services provided to W by a person to whom a licence applies;

- (c) another woman consented in writing (and did not withdraw the consent) —
 - (i) to the placing of the embryo in W after the death of the other woman; and
 - (ii) to being treated for the purpose mentioned in subsection (4) as the parent of any resulting child;
- (d) the other woman died before the placing of the embryo in W;
- (e) immediately before the other woman's death, the agreed female parenthood conditions set out in section 29 were met in relation to the other woman in relation to treatment proposed to be provided to W by a person to whom a licence applies;
- (f) W has elected in writing not later than the end of the period of 42 days from the day on which the child was born for the other woman to be treated for the purpose mentioned in subsection (4) as the parent of the child; and
- (g) no one else is to be treated —
 - (i) as the father of the child by virtue of section 20 or 21 or by virtue of section 30(2) or (3); or
 - (ii) as a parent of the child by virtue of section 27 or 28 or by virtue of adoption,
 then the other woman is to be treated for the purpose mentioned in subsection (4) as a parent of the child.
- (3) Subsections (1) and (2) apply whether W was in the Island or elsewhere at the time of the placing in her of the embryo.
- (4) The purpose referred to in subsections (1) and (2) is the purpose of enabling the deceased woman's particulars to be entered as the particulars of the child's other parent in a relevant register of births.

32 Woman not to be other parent merely because of egg donation

P2008/22/47 and drafting

A woman is not to be treated as the parent of a child whom she is not carrying and has not carried, except where she is so treated —

- (a) by virtue of section 27 or 28;
- (b) by virtue of section 31 (for the purpose mentioned in subsection (4) of that section); or
- (c) by virtue of adoption.

Effect of sections 18 to 32

33 Effect of sections 18 to 32

P2008/22/48 and drafting

- (1) Where by virtue of section 18, 20, 21, 27 or 28 a person is to be treated as the mother, father or parent of a child, that person is to be treated in law as the mother, father or parent (as the case may be) of the child for all purposes.

- (2) Where by virtue of section 18, 23, 26, 30 or 32 a person is not to be treated as a parent of the child, that person is to be treated in law as not being a parent of the child for any purpose.
- (3) Where section 24(1) or 25(1) or (2) applies, the deceased man —
 - (a) is to be treated in law as the father of the child for the purpose mentioned in section 24(3) or 25(4); but
 - (b) is to be treated in law as not being the father of the child for any other purpose.
- (4) Where section 31(1) or (2) applies, the deceased woman —
 - (a) is to be treated in law as a parent of the child for the purpose mentioned in section 31(4); but
 - (b) is to be treated in law as not being a parent of the child for any other purpose.
- (5) Where any of subsections (1) to (4) has effect, references to any relationship between two people in any enactment, deed or other instrument or document (whenever passed or made) are to be read accordingly.
- (6) A child who —
 - (a) has a parent by virtue of section 27; or
 - (b) has a parent by virtue of section 28 who is at any time during the period beginning with the time mentioned in section 28(b) and ending with the time of the child's birth a party to a marriage or civil partnership with the child's mother,is the legitimate child of the child's parents.
- (7) Nothing in the provisions of section 18(1) or sections 20 to 32, read with this section —
 - (a) affects the succession to any dignity or title of honour or renders any person capable of succeeding to or transmitting a right to succeed to any such dignity or title; or
 - (b) affects the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any dignity or title of honour.

References to parties to marriage or civil partnership

34 Meaning of references to parties to a marriage

P2008/22/49 and drafting

- (1) The references in sections 20 to 32 to the parties to a marriage at any time there referred to —
 - (a) are to the parties to a marriage subsisting at that time, unless a separation order was then in force; but
 - (b) include the parties to a void marriage if either or both of them reasonably believed at that time that the marriage was valid; and for the purposes of those sections it is to be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the marriage was valid.

- (2) In subsection (1)(a), “separation order” means —
- (a) a separation order under section 17 of the *Matrimonial Proceedings Act 2003*; or
 - (b) a legal separation obtained in a territory outside the Island and recognised in the Island.

35 Meaning of references to parties to a civil partnership

P2008/22/50 and drafting

- (1) The references in sections 20 to 32 to the parties to a civil partnership at any time there referred to —
- (a) are to the parties to a civil partnership subsisting at that time, unless a separation order was then in force; but
 - (b) include the parties to a void civil partnership if either or both of them reasonably believed at that time that the civil partnership was valid; and for the purposes of those sections it is to be presumed, unless the contrary is shown, that one of them reasonably believed at that time that the civil partnership was valid.
- (2) In subsection (1)(a), “separation order” means —
- (a) a separation order under section 35(1)(d) of the *Civil Partnership Act 2011*; or
 - (b) a legal separation obtained in a territory outside the Island and recognised in the Island.

Further provision about registration by virtue of section 24, 25 or 31

36 Meaning of “relevant register of births”

P2008/22/51 and drafting

For the purposes of this Part, a “relevant register of births”, in relation to a birth, is a register of live-births or still-births kept under the *Civil Registration Act 1984*.

37 Late election by mother with consent of Registrar General

P2008/22/52 and drafting

- (1) The requirement under section 24(1), 25(1) or (2) or 31(1) or (2) as to the making of an election (which requires an election to be made either on or before the day on which the child was born or within the period of 42 days from that day) is nevertheless to be treated as satisfied if the required election is made after the end of that period but with the consent of the Registrar General under subsection (2).
- (2) The Registrar General may at any time consent to the making of an election after the end of the period mentioned in subsection (1) if, on an application made in accordance with such requirements as the Registrar may specify, the Registrar is satisfied that there is a compelling reason for giving consent to the making of such an election.

*Interpretation of references to father etc. where woman is other parent***38 Interpretation of references to father etc.**

P2008/22/53 and drafting

- (1) Subsections (2) and (3) have effect, subject to subsections (4) to (6), for the interpretation of any enactment, deed or any other instrument or document (whenever passed or made).
- (2) Any reference (however expressed) to the father of a child who has a parent by virtue of section 27 or 28 is to be read as a reference to the woman who is a parent of the child by virtue of that section.
- (3) Any reference (however expressed) to evidence of paternity is, in relation to a woman who is a parent by virtue of section 27 or 28, to be read as a reference to evidence of parentage.
- (4) This section does not affect the interpretation of the enactments specified in subsection (5) (which make express provision for the case where a child has a parent by virtue of section 27 or 28).
- (5) Those enactments are —
 - (a) the *Civil Registration Act 1984*;
 - (b) the *Legitimacy Act 1985*;
 - (c) the *Congenital Disabilities (Civil Liability) Act 1986*; and
 - (d) Part 1 of the *Children and Young Persons Act 2001*.
- (6) This section does not affect the interpretation of provisions of enactments amended by regulations made under section 51(1).

*Parental orders***39 Parental orders: two applicants**

P2008/22/54 and drafting

- (1) On an application made by two people (“the applicants”), the High Court may make an order providing for a child to be treated in law as the child of the applicants if —
 - (a) the child has been carried by a woman who is not one of the applicants, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination;
 - (b) the gametes of at least one of the applicants were used to bring about the creation of the embryo; and
 - (c) the conditions in subsections (2) to (9) are satisfied.
- (2) The applicants must be —
 - (a) married to each other;
 - (b) civil partners of each other; or
 - (c) two persons who are living as partners in an enduring family relationship and are not within prohibited degrees of relationship in relation to each other.

- (3) Except in a case falling within subsection (11), the applicants must apply for the order during the period of 6 months beginning with the day on which the child is born.
- (4) At the time of the application and the making of the order —
- (a) the child's home must be with the applicants; and
 - (b) either or both of the applicants must be domiciled in the Island.
- (5) At the time of the making of the order both the applicants must have attained the age of 18.
- (6) The Court must be satisfied that both —
- (a) the woman who carried the child; and
 - (b) any other person who is a parent of the child but is not one of the applicants (including any man who is the father by virtue of section 20 or 21 or any woman who is a parent by virtue of section 27 or 28),
- have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.
- (7) Subsection (6) does not require the agreement of a person who cannot be found or is incapable of giving agreement; and the agreement of the woman who carried the child is ineffective for the purpose of that subsection if given by her less than 6 weeks after the child's birth.
- (8) The Court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by either of the applicants for or in consideration of —
- (a) the making of the order;
 - (b) any agreement required by subsection (6);
 - (c) the handing over of the child to the applicants; or
 - (d) the making of arrangements with a view to the making of the order,
- unless authorised by the Court.
- (9) An order relating to the child must not previously have been made under this section or section 40, unless the order has been quashed or an appeal against the order has been allowed.
- (10) Subsection (1)(a) applies whether the woman was in the Island or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.
- (11) An application which —
- (a) relates to a child born before the coming into operation of this section; and
 - (b) is made by two persons who, throughout the period applicable under section 89(2) of the *Children and Young Persons Act 2001*, were not eligible to apply for an order under that section in relation to the child as husband and wife,
- may be made within the period of 6 months beginning with the day on which this section comes into operation.

40 Parental orders: one applicant

P2008/22/54A and drafting

- (1) On an application made by one person ("the applicant"), the High Court may make an order providing for a child to be treated in law as the child of the applicant if —
 - (a) the child has been carried by a woman who is not the applicant, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination;
 - (b) the gametes of the applicant were used to bring about the creation of the embryo; and
 - (c) the conditions in subsections (2) to (8) are satisfied.
- (2) Except in a case falling within subsection (1), the applicant must apply for the order within the period of 6 months beginning with the day on which the child is born.
- (3) At the time of the application and the making of the order —
 - (a) the child's home must be with the applicant; and
 - (b) the applicant must be domiciled in the Island.
- (4) At the time of the making of the order the applicant must have attained the age of 18.
- (5) The Court must be satisfied that both —
 - (a) the woman who carried the child; and
 - (b) any other person who is a parent of the child but is not the applicant (including any man who is the father by virtue of section 20 or 21 or any woman who is a parent by virtue of section 27 or 28),have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.
- (6) Subsection (5) does not require the agreement of a person who cannot be found or is incapable of giving agreement; and the agreement of the woman who carried the child is ineffective for the purpose of that subsection if given by her less than 6 weeks after the child's birth.
- (7) The Court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by the applicant for or in consideration of —
 - (a) the making of the order;
 - (b) any agreement required by subsection (5);
 - (c) the handing over of the child to the applicant; or
 - (d) the making of arrangements with a view to the making of the order,unless authorised by the Court.
- (8) An order relating to the child must not previously have been made under section 39 or this section, unless the order has been quashed or an appeal against the order has been allowed.
- (9) Subsection (1)(a) applies whether the woman was in the Island or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

- (10) An application which relates to a child born before the coming into operation of this section may be made within the period of 6 months beginning with the day on which this section comes into operation.

41 Parental orders: supplementary provision

P2008/22/55 and drafting

- (1) The Department may by regulations provide —
- (a) for any provision of the *Adoption Act 2021* to have effect, with such modifications (if any) as may be specified in the regulations, in relation to orders under section 39 or 40, and applications for such orders, as it has effect in relation to adoption, and applications for adoption orders; and
 - (b) for references in any enactment to adoption, an adopted child or an adoptive relationship to be read (respectively) as references to the effect of an order under section 39 or 40, a child to whom such an order applies and a relationship arising by virtue of the enactments about adoption, as applied by the regulations, and for similar expressions in connection with adoption to be read accordingly.
- Tynwald procedure – approval required.
- (2) The regulations may include such incidental or supplemental provision as appears to the Department to be necessary or desirable in consequence of any provision made by virtue of subsection (1)(a) or (b).

42 Parental orders: reciprocal effect of orders

2001/20/103 and drafting

- (1) The Council of Ministers may by order provide that prescribed orders which —
- (a) are made by a court in any part of the United Kingdom or any of the Channel Islands; and
 - (b) appear to the Council of Ministers to correspond in their effect to orders which may be made under any provision of this Part,
- shall have effect in prescribed circumstances, for prescribed purposes of this Part, as if they were orders of a prescribed kind made under this Part.
- Tynwald procedure – approval required.
- (2) An order under this section may modify any provision of this Part in its application by virtue of that order in relation to an order made by a court outside the Island.
- (3) In this section, “prescribed” means prescribed by an order under this section.

PART 4 – SURROGACY ARRANGEMENTS

43 Part 4 interpretation

- (1) In this Part —
- “**surrogacy arrangement**” shall be construed in accordance with subsection (2);

“**surrogate mother**” means a woman who carries a child in pursuance of an arrangement —

- (a) made before she began to carry the child; and
 - (b) made with a view to any child carried in pursuance of it being handed over to, and parental responsibility being met (so far as practicable) by, another person or other persons.
- (2) For the purposes of this Part —
- (a) if a woman were to carry a child in pursuance of an arrangement and thereby became a surrogate mother, the arrangement is a surrogacy arrangement;
 - (b) in determining whether an arrangement is made with such a view as is mentioned in paragraph (b) of the definition of “**surrogate mother**”, regard may be had to the circumstances as a whole (and, in particular, where there is a promise or understanding that any payment will or may be made to the woman or for her benefit in respect of the carrying of the child in pursuance of the arrangement, to that promise or understanding);
 - (c) an arrangement may be regarded as made with such a view although it is subject to conditions regarding the handing over of the child;
 - (d) a woman who carries a child is to be treated for the purposes of the definition of “**surrogate mother**” as beginning to carry it at the time of the insemination or of the placing in her of an embryo, of an egg in the process of fertilisation or of sperm and eggs, as the case may be, that results in her carrying the child.
- (3) Subject to section 45(8), for the purposes of this Part a person does an act on a commercial basis if —
- (a) any payment is at any time received by the person or another in respect of it; or
 - (b) the person does it with a view to any payment being received by the person or another in respect of making, or negotiating or facilitating the making of, any surrogacy arrangement.
- In this subsection “payment” does not include payment to or for the benefit of a surrogate mother or prospective surrogate mother.
- (4) Sections 45 to 47 apply to arrangements whether or not they are lawful.

44 Surrogacy arrangements unenforceable

2001/20/90; P1985/49/1A; P1990/37/36

No surrogacy arrangement is enforceable by or against any of the persons making it.

45 Negotiating surrogacy arrangements

2001/20/91; P1985/49/2(1) to (4) and drafting

- (1) Any person who on a commercial basis does any of the following acts —
- (a) initiates or takes part in any negotiations with a view to the making of a surrogacy arrangement;

- (b) offers or agrees to negotiate the making of a surrogacy arrangement; or
 - (c) compiles any information with a view to its use in making, or negotiating the making of, surrogacy arrangements,is guilty of an offence.
- (2) Any person who on a commercial basis knowingly causes another to do any of the acts specified in subsection (1) is guilty of an offence.
- (3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.
- (4) It is not a contravention of subsection (1) or (2) —
 - (a) for a woman, with a view to becoming a surrogate mother herself, to do any act mentioned in subsection (1) or to cause such an act to be done; or
 - (b) for any person, with a view to a surrogate mother carrying a child for the person, to do such an act or to cause such an act to be done.
- (5) A non-profit making body does not contravene subsection (1) merely because —
 - (a) the body does an act falling within subsection (1)(a) or (c) in respect of which any reasonable payment is at any time received by it or another; or
 - (b) it does an act falling within subsection (1)(a) or (c) with a view to any reasonable payment being received by it or another in respect of facilitating the making of any surrogacy arrangement.
- (6) A person who knowingly causes a non-profit making body to do an act falling within subsection (1)(a) or (c) does not contravene subsection (1) merely because —
 - (a) any reasonable payment is at any time received by the body or another in respect of the body doing the act; or
 - (b) the body does the act with a view to any reasonable payment being received by it or another person in respect of the body facilitating the making of any surrogacy arrangement.
- (7) Any reference in subsection (5) or (6) to a reasonable payment in respect of the doing of an act by a non-profit making body is a reference to a payment not exceeding the body's costs reasonably attributable to the doing of the act.
- (8) In proceedings against a person for an offence under subsection (1) or (2), the person is not to be treated as doing an act on a commercial basis by reason of any payment received by another in respect of the act if it is proved that —
 - (a) in a case where the payment was received before the person did the act, the person did not do the act knowing or having reasonable cause to suspect that any payment had been received in respect of the act; and
 - (b) in any other case, the person did not do the act with a view to any payment being received in respect of it.

46 Bodies negotiating surrogacy arrangements

2001/20/92; P1985/49/2(5) to (9) and drafting

- (1) Where —
- (a) a person acting on behalf of a body of persons takes part in negotiating or facilitating the making of a surrogacy arrangement in the Island; and
 - (b) negotiating or facilitating the making of surrogacy arrangements is an activity of the body; and
 - (c) the body at any time receives any payment made by or on behalf of —
 - (i) a woman who carries a child in pursuance of the surrogacy arrangement referred to in paragraph (a);
 - (ii) the person or persons for whom she carries it; or
 - (iii) any person connected with the woman or with that person or those persons,

the body is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

For the purposes of this subsection a payment received by a person connected with a body is to be treated as received by the body.

- (2) A non-profit making body is not guilty of an offence under subsection (1), in respect of the receipt of any payment described in that subsection, merely because a person acting on behalf of the body takes part in facilitating the making of a surrogacy arrangement.
- (3) In proceedings against a body for an offence under subsection (1) it is a defence to prove that the payment concerned was not made in respect of the arrangement referred to in subsection (1)(a).
- (4) Where —
- (a) negotiating or facilitating the making of surrogacy arrangements is an activity of a body of persons; and
 - (b) either —
 - (i) the making of the arrangements is negotiated or facilitated on a commercial basis; or
 - (ii) payments are received (or treated for the purposes of subsection (1) as received) by the body in contravention of subsection (1) in the case of the arrangements,
- any person who takes part in the management or control of the body in question, or of that activity, is guilty of an offence and liable on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.
- (5) A person is not guilty of an offence under subsection (1) if —
- (a) the body of persons referred to in that subsection is a non-profit making body; and
 - (b) the only activity of that body which falls within subsection (4) is facilitating the making of surrogacy arrangements in the Island.

- (6) In subsection (5)(b), “facilitating the making of surrogacy arrangements” is to be construed in accordance with subsection (4).
- (7) In proceedings against a person for an offence under subsection (4) it is a defence to prove that the person neither knew nor had reasonable cause to suspect that the activity referred to in subsection (4) was an activity of the body concerned; and for the purposes of such proceedings any arrangement falling within subsection (4)(b) shall be disregarded if it is proved that the payment concerned was not made in respect of the arrangement.
- (8) In any proceedings for an offence under this section, proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) —
 - (a) by any person taking part in the management or control of a body of persons or of any of the activities of the body; or
 - (b) by any person doing any of the acts mentioned in section 45(1)(a) to (c),shall be admissible as evidence of the activities of the body.

47 Advertisements about surrogacy

2001/20/93; P1985/49/3 and drafting

- (1) This section applies to any advertisement containing an indication (however expressed) —
 - (a) that any person is or may be willing to enter into a surrogacy arrangement or to negotiate or facilitate the making of a surrogacy arrangement; or
 - (b) that any person is looking for a woman willing to become a surrogate mother or for persons wanting a woman to carry a child as a surrogate mother.
- (2) This section does not apply to any advertisement placed by, or on behalf of, a non-profit making body if the advertisement relates only to the doing by the body of acts that would not contravene section 45(1) even if done on a commercial basis (within the meaning of section 43(3)).
- (3) Where a newspaper or periodical containing an advertisement to which this section applies is published in the Island, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.
- (4) Where any advertisement to which this section applies is conveyed by means of an electronic communications network so as to be seen or heard in the Island, any person who in the Island causes it to be so conveyed knowing it to contain such an indication is guilty of an offence.
- (5) A person who publishes or causes to be published in the Island an advertisement to which this section applies (not being an advertisement contained in a newspaper or periodical or conveyed by means of an electronic communications network) is guilty of an offence.
- (6) A person who distributes or causes to be distributed in the Island an advertisement to which this section applies (not being an advertisement contained in a newspaper or periodical published outside the Island or an advertisement conveyed by means of an electronic communications

network) knowing it to contain such an indication as is mentioned in subsection (1) is guilty of an offence.

- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) In this section “electronic communications network” has the same meaning as in the *Communications Act 2021*.

48 Implementation of UK legislation relating to surrogacy

- (1) The Department may by regulations make such provision as appears to it to be necessary or expedient for the purposes of —
- (a) giving effect, either wholly or partly, to a provision of UK legislation relating to surrogacy; or
 - (b) dealing with matters arising out of or related to such provision.
- Tynwald procedure – approval required.
- (2) Without limiting subsection (1), regulations under that subsection may —
- (a) make provision by reference to (or by incorporation, by reference, annexation or otherwise, of) a provision of UK legislation relating to surrogacy, or of any class or description of such provisions;
 - (b) when making the provision described in paragraph (a), do so to such extent and subject to such exceptions, adaptations and modifications to the UK legislation as may be specified in the regulations.
- (3) The provision that may be made by regulations under subsection (1) includes an amendment of any enactment other than the *Human Rights Act 2001*, but does not include provision —
- (a) imposing a penalty of custody for more than 10 years for a criminal offence;
 - (b) imposing or increasing taxation; or
 - (c) taking effect from a date earlier than that of the making of the regulations containing the provision.

PART 5 – CLOSING PROVISIONS

49 Amendment of enactments

Schedule 1 (amendment of enactments) has effect.

50 Transitional, repeal, and saving provisions relating to Part 3

P2008/22/57 and drafting

- (1) Sections 18 to 33 have effect only in relation to children carried by women as a result of the placing in them of embryos or of sperm and eggs, or their artificial insemination (as the case may be), after the commencement of those sections.
- (2) Part 9 of the *Children and Young Persons Act 2001* is repealed subject to the savings in subsections (3) and (5).

- (3) Despite the repeal of Part 9 of the *Children and Young Persons Act 2001*, sections 86 to 88 of that Act continue to have effect in relation to children carried by women as a result of the placing in them of embryos or of sperm and eggs, or their artificial insemination (as the case may be), before the commencement of sections 18 to 33.
- (4) The text of sections 86 to 88 of the *Children and Young Persons Act 2001* (as saved by subsection (3)) is set out in Schedule 2 to assist the reader.
- (5) The repeal of Part 9 of the *Children and Young Persons Act 2001* does not affect the validity of any order made under section 89 of that Act before the coming into operation of subsection (2).

51 Power to make further consequential provision

- (1) The Department may by regulations make —
 - (a) any supplementary, incidental or consequential provision;
 - (b) any transitory, transitional or saving provision,which it considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.
Tynwald procedure —approval required.
- (2) Regulations under subsection (1) may modify, repeal or revoke any provision of any enactment passed or made before or at the same time as this Act.

SCHEDULE 1

AMENDMENT OF ENACTMENTS

[Section 49]

1 Civil Registration Act 1984

- (1) The *Civil Registration Act 1984* is amended as follows.
- (2) In section 3 (particulars of births to be registered), after subsection (3) insert —
- «(3A) In the case of a child who has a parent by virtue of section 27 or 28 of the *Human Fertilisation and Embryology Act 2022*, the reference in subsection (3)(a) to the father of the child is to be read as a reference to the woman who is a parent by virtue of that section.»
- (3) In section 4 (information concerning birth to be given to registrar within 42 days), after subsection (3) insert—
- «(4) In the case of a child who has a parent by virtue of section 27 or 28 of the *Human Fertilisation and Embryology Act 2022*, the references in subsection (1) to the father of the child are to be read as references to the woman who is a parent by virtue of that section.»
- (4) In section 10(4) (giving of information to a person other than the registrar), after “section 12(1)(b),(c) or (d)” insert «or section 12(4)(b), (c) or (d)».
- (5) In section 12 (registration of father of non-marital child) —
- (a) for the heading to the section substitute «Registration of father where parents not married or civil partners or of second female parent where parents not married or civil partners»;
- (b) after subsection (3) insert —
- «(4) Notwithstanding anything in the foregoing provisions of this Act, no woman shall as a parent of the child by virtue of section 28 of the *Human Fertilisation and Embryology Act 2022* be required to give information concerning the birth of the child, and the registrar shall not enter in the register the name of any woman as a parent of the child by virtue of that section except —
- (a) at the joint request of the mother and the person stating herself to be the other parent of the child (in which case that person shall sign the register together with the mother); or
- (b) at the request of the mother on production of —
- (i) a declaration in the prescribed form made by the mother stating that the person to be registered (“the woman concerned”) is a parent of the child by virtue of section 28 of the *Human Fertilisation and Embryology Act 2022*; and
- (ii) a statutory declaration made by the woman concerned stating herself to be a parent of the child by virtue of section 28 of that Act; or
- (c) at the request of the woman concerned on production of —

- (i) a declaration in the prescribed form made by the woman concerned stating herself to be a parent of the child by virtue of section 28 of the *Human Fertilisation and Embryology Act 2022*; and
 - (ii) a statutory declaration made by the mother stating that the woman concerned is a parent of the child by virtue of section 28 of that Act; or
 - (d) at the request of the mother or the woman concerned on production of —
 - (i) a copy of any agreement made between them under section 4A(1)(b) of the *Children and Young Persons Act 2001* in relation to the child; and
 - (ii) a declaration in the prescribed form by the person making the request stating that the agreement was made in compliance with section 4A(1)(b) of that Act and has not been brought to an end by an order of a court; or
 - (e) at the request of the mother or the woman concerned on production of —
 - (i) a certified copy of an order under section 4A(1)(c) of the *Children and Young Persons Act 2001* giving the woman concerned parental responsibility for the child; and
 - (ii) a declaration in the prescribed form by the person making the request stating that the order has not been brought to an end by an order of a court; or
 - (f) at the request of the mother or the woman concerned on production of —
 - (i) a certified copy of an order under paragraph 1 of Schedule 1 to the *Children and Young Persons Act 2001* which requires the woman concerned to make any financial provision for the child and which is not an order falling within paragraph 3(3) of that Schedule; and
 - (ii) a declaration in the prescribed form by the person making the request stating that the order has not been discharged by an order of a court.
- (5) Where, in the case of a child who is not a marital child, a person stating herself to be a parent of the child by virtue of section 28 of the *Human Fertilisation and Embryology Act 2022* makes a request to the registrar in accordance with any of paragraphs (c) to (f) of subsection (4) —
- (a) she shall be treated as a qualified informant concerning the birth of the child for the purposes of this Act; and
 - (b) the giving of information concerning the birth of the child by that person and the signing of the register by her in the presence of the registrar shall act as a discharge of any duty of any other qualified informant under section 4.».
- (6) After section 12 insert —

«12A Registration of father or second female parent by virtue of certain provisions of Human Fertilisation and Embryology Act 2022

- (1) Notwithstanding anything in the foregoing provisions of this Act, the registrar shall not enter in the register —
- (a) as the father of a child, the name of a man who is to be treated for that purpose as the father of the child by virtue of section 24(1) or 25(1) or (2) of the *Human Fertilisation and Embryology Act 2022* (circumstances in which man to be treated as father of child for purposes of registration of birth where fertility treatment undertaken after his death); or
 - (b) as a parent of the child, the name of a woman who is to be treated for that purpose as a parent of the child by virtue of section 31(1) or (2) of that Act (circumstances in which woman to be treated as parent of child for purposes of registration of birth where fertility treatment undertaken after her death),
- unless the condition in subsection (2) is satisfied.
- (2) The condition in this subsection is satisfied if —
- (a) the mother requests the registrar to make such an entry in the register and produces the relevant documents; or
 - (b) in the case of the death or inability of the mother, the relevant documents are produced by some other person who is a qualified informant.
- (3) In this section “the relevant documents” means —
- (a) the consent in writing and election mentioned in section 24(1), 25(1) or (2) or 31(1) or (2) (as the case requires) of the *Human Fertilisation and Embryology Act 2022*;
 - (b) a certificate of a registered medical practitioner as to the medical facts concerned; and
 - (c) such other documentary evidence (if any) as the registrar considers appropriate.».

(7) In section 13 (re-registration of birth of non-marital child) —

 - (a) for the heading to the section substitute «Re-registration where parents neither married nor civil partners»;
 - (b) in subsection (1) —
 - (i) after “as the father of the child” insert «(or as a parent of the child by virtue of section 27, 28 or 31(1) or (2) of the *Human Fertilisation and Embryology Act 2022*)»; and
 - (ii) after paragraph (e) insert —
 - «(f) in the case of a man who is to be treated as the father of the child by virtue of section 24(1) or 25(1) or (2) of the *Human Fertilisation and Embryology Act 2022*, if the condition in section 12A(2) is satisfied; or»;
 - (c) after subsection (2) insert —
 - «(2A) Where there has been registered under this Act the birth of a child who is not a marital child, but no person has been registered as a

parent of the child by virtue of section 27, 28 or 31(1) or (2) of the *Human Fertilisation and Embryology Act 2022* (or as the father of the child), the registrar shall re-register the birth so as to show a woman (“the woman concerned”) as a parent of the child by virtue of section 28 or 31(1) or (2) of that Act —

- (a) at the joint request of the mother and the woman concerned;
or
- (b) at the request of the mother on production of —
 - (i) a declaration in the prescribed form made by the mother stating that the woman concerned is a parent of the child by virtue of section 28 of the *Human Fertilisation and Embryology Act 2022*; and
 - (ii) a statutory declaration made by the woman concerned stating herself to be a parent of the child by virtue of section 28 of that Act; or
- (c) at the request of the woman concerned on production of —
 - (i) a declaration in the prescribed form made by the woman concerned stating herself to be a parent of the child by virtue of section 28 of the *Human Fertilisation and Embryology Act 2022*; and
 - (ii) a statutory declaration made by the mother stating that the woman concerned is a parent of the child by virtue of section 28 of that Act; or
- (d) at the request of the mother or the woman concerned on production of —
 - (i) a copy of an agreement made between them under section 4A(1)(b) of the *Children and Young Persons Act 2001* in relation to the child; and
 - (ii) a declaration in the prescribed form by the person making the request stating that the agreement was made in compliance with section 4A of that Act and has not been brought to an end by an order of a court; or
- (e) at the request of the mother or the woman concerned on production of —
 - (i) a certified copy of an order under section 4A of the *Children and Young Persons Act 2001* giving the woman concerned parental responsibility for the child; and
 - (ii) a declaration in the prescribed form by the person making the request stating that the order has not been brought to an end by an order of a court; or
- (f) at the request of the mother or the woman concerned on production of —
 - (i) a certified copy of an order under paragraph 1 of Schedule 1 to the *Children and Young Persons Act 2001* which requires the woman concerned to make any financial provision for the child and which is not

- an order falling within paragraph 3(3) of that Schedule; and
- (ii) a declaration in the prescribed form by the person making the request stating that the order has not been discharged by an order of a court; or
- (g) in the case of a woman who is to be treated as a parent of the child by virtue of section 31(1) or (2) of the *Human Fertilisation and Embryology Act 2022*, if the condition in section 12A(2) is satisfied.»;
- (d) in subsection (3), for paragraphs (b) to (c) substitute —
- «(b) in the case of any of the following requests —
- (i) a request under subsection (1)(a) or (b) or subsection (2A)(a) or (b);
- (ii) a request under subsection (1)(d) or (e) or subsection (2A)(d), (e) or (f) made by the mother of the child,
- the mother shall also sign the register;
- (c) in a case within subsection (1)(f) or (2A)(g), the mother or (as the case may be) the qualified informant shall also sign the register;
- (d) in the case of a request made under subsection (1)(a) or (c) or a request made under subsection (1)(d) or (e) by the person requesting to be registered as the father of the child, that person shall also sign the register;
- (e) in the case of a request made under subsection (2A)(a) or (c) or a request made under subsection (2A)(d), (e) or (f) by a woman requesting to be registered as a parent of the child by virtue of section 28 of the *Human Fertilisation and Embryology Act 2022*, that woman shall also sign the register.».
- (8) In section 16 (registration of name of child or alteration of name), after subsection (1) insert —
- «(1A) In the case of a child who has a parent by virtue of section 27 or 28 of the *Human Fertilisation and Embryology Act 2022*, the reference in subsection (1)(b) to the father of the child is to be read as a reference to the woman who is a parent of the child by virtue of that section.».
- (9) In section 17 (re-registration of births of legitimated persons) —
- (a) in subsection (2), in the proviso —
- (i) in paragraph (a), after “legitimated person” insert «, or herself to be a parent of the legitimated person by virtue of section 28 of the *Human Fertilisation and Embryology Act 2022*,»; and
- (ii) in paragraph (b), after “the paternity of the legitimated person” insert «(or, as the case may be, the parentage of the legitimated person by virtue of section 28 of that Act),»;
- (b) in subsection (4) —

- (i) after “the marriage of his parents” insert «or on their becoming civil partners of each other»; and
 - (ii) after “the date of the marriage” insert «or of the formation of the civil partnership».
- (10) In section 44 (interpretation), for the definition of “marital child” substitute —
- «“marital child” has the same meaning as in section 5(2) of the *Children and Young Persons Act 2001*;».

2 Legitimacy Act 1985 amended

- (1) The *Legitimacy Act 1985* is amended as follows.
- (2) After section 2 (legitimation of parents’ subsequent marriage or civil partnership insert—

«2A Legitimation in cases where section 28 of the Human Fertilisation and Embryology Act 2022 applies

Subject to the following provisions of this Act, where —

- (a) a person (“the child”) has a parent (“the female parent”) by virtue of section 28 of the *Human Fertilisation and Embryology Act 2022* (treatment provided to woman who agrees that second woman to be parent);
- (b) at the time of the child’s birth, the female parent and the child’s mother are not married to or civil partners of each other;
- (c) the female parent and the child’s mother subsequently enter into a marriage or civil partnership; and
- (d) the female parent is at the date of the marriage or formation of the civil partnership domiciled in the Island,

the marriage or civil partnership (as the case may be) shall render the child, if living, legitimate from the date of the marriage or formation of the civil partnership.».

- (3) In section 3 (legitimation by extraneous law), renumber the existing provision as subsection (1) of the section and at the end insert —

«(2) Subject to the following provisions of this Act, where —

- (a) a person (“the child”) has a parent (“the female parent”) by virtue of section 28 of the *Human Fertilisation and Embryology Act 2022* (treatment provided to woman who agrees that second woman to be parent);
- (b) at the time of the child’s birth, the female parent and the child’s mother are not married to or civil partners of each other;
- (c) the female parent and the child’s mother subsequently enter into a marriage or civil partnership; and
- (d) the female parent is not at the time of the marriage or formation of the civil partnership domiciled in the Island but is domiciled in a country by the law of which the child

became legitimated by virtue of the marriage or civil partnership,

the child, if living, shall in the Island be recognised as having been so legitimated from the date of the marriage or formation of the civil partnership (as the case may be) notwithstanding that, at the time of the child's birth, the female parent was domiciled in a country the law of which did not permit legitimation by subsequent marriage or civil partnership.».

- (4) In section 11 (interpretation), in the definition of "legitimated person", in paragraph (a), after "section 2" insert «, 2A».

3 Congenital Disabilities (Civil Liability) Act 1986 amended

- (1) The *Congenital Disabilities (Civil Liability) Act 1986* is amended as follows.
- (2) In section 1 (civil liability to child born disabled), after subsection (4) insert —
- «(4A) In the case of a child who has a parent by virtue of section 27 or 28 of the *Human Fertilisation and Embryology Act 2022*, the reference in subsection (4) to the child's father includes a reference to the woman who is a parent by virtue of that section.».
- (3) After section 1 (civil liability to child born disabled) insert —

«1A Extension of section 1 to cover infertility treatments

P1976/28/1A

- (1) In any case where —
- (a) a child carried by a woman as the result of the placing in her of an embryo or of sperm and eggs or her artificial insemination is born disabled;
 - (b) the disability results from an act or omission in the course of the selection, or the keeping or use outside the body, of the embryo carried by her or of the gametes used to bring about the creation of the embryo; and
 - (c) a person is under this section answerable to the child in respect to the act or omission,
- the child's disabilities are to be regarded as damage resulting from the wrongful act of that person and actionable accordingly at the suit of the child.
- (2) Subject to subsection (3) and the applied provisions of section 1, a person (here referred to as "the defendant") is answerable to the child if the defendant was liable in tort to one or both of the parents (here referred to as "the parent or parents concerned") or would, if sued in due time, have been so; and it is no answer that there could not have been such liability because the parent or parents concerned suffered no actionable injury, if there was a breach of legal duty which, accompanied by injury, would have given rise to the liability.
- (3) The defendant is not under this section answerable to the child if at the time the embryo, or the sperm and eggs, are placed in the woman or the time of her insemination (as the case may be) either or both of the parents knew the risk of their child being born

- disabled (that is to say, the particular risk created by the act or omission).
- (4) Subsections (5) to (7) of section 1 apply for the purposes of this section as they apply for the purposes of that but as if references to the parent or the parent affected were references to the parent or parents concerned.».
- (4) In section 3 (interpretation and other supplementary provisions) —
- (a) at the end of subsection (2) insert on a new line —
- «and references to embryos shall be construed in accordance with section 3 of the *Human Fertilisation and Embryology Act 2022*.»;
- (b) in subsection (3), after “section 1” insert «1A»; and
- (c) in subsection (4), for “either” substitute «any».

4 Children and Young Persons Act 2001

- (1) The *Children and Young Persons Act 2001* is amended as follows.
- (2) In section 3 (parental responsibility for children) —
- (a) after subsection (1) insert —
- «(1A) Where a child —
- (a) has a parent by virtue of section 27 of the *Human Fertilisation and Embryology Act 2022*; or
- (b) has a parent by virtue of section 28 of that Act and is a marital child (within the meaning of section 5),
- the child’s mother and the other parent shall each have parental responsibility for the child.»;
- (b) in subsection (2A), for “(registration of father of non-marital child)” substitute «(registration of father where parents not married or civil partners or of second female parent where parents not married or civil partners)»;
- (c) after subsection (2B) insert —
- «(2C) Where a child has a parent by virtue of section 28 of the *Human Fertilisation and Embryology Act 2022* and is not a marital child (within the meaning of section 5) —
- (a) the mother shall have parental responsibility for the child; and
- (b) the other parent shall have parental responsibility for the child if she has acquired it (and has not ceased to have it) in accordance with the provisions of this Act.».
- (3) After section 4A insert —
- «4B Acquisition of parental responsibility by second female parent**
- (1) Where a child has a parent by virtue of section 28 of the *Human Fertilisation and Embryology Act 2022* and is not a marital child (within the meaning of section 5), that parent shall acquire parental responsibility for the child if —

- (a) she becomes registered as a parent of the child under any of the enactments specified in subsection (2);
 - (b) she and the child's mother make an agreement providing for her to have parental responsibility for the child; or
 - (c) the High Court, on her application, orders that she shall have parental responsibility for the child.
- (2) The enactments referred to in subsection (1)(a) are paragraphs (a), (b) and (c) of section 12(4) and of section 13(2A) of the *Civil Registration Act 1984*.
- (3) An agreement under subsection (1)(b) is also a "parental responsibility agreement", and section 4(2) applies in relation to such an agreement as it applies in relation to parental responsibility agreements under section 4.
- (4) A person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the Court so orders.
- (5) The Court may make an order under subsection (4) on the application —
- (a) of any person who has parental responsibility for the child; or
 - (b) with the leave of the Court, of the child,
- subject, in the case of parental responsibility acquired under subsection (1)(c), to section 14(4).
- (6) The Court may only grant leave under subsection (5)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.».
- (4) In section 5 (meaning of "marital child"), after subsection (2)(c) insert —
- «(ca) a person who has a parent by virtue of section 27 of the *Human Fertilisation and Embryology Act 2022* (which relates to treatment provided to a woman who is at the time of treatment married to a woman or a party to a civil partnership with a woman or, in certain circumstances, a void marriage or civil partnership);
 - (cb) a person who has a parent by virtue of section 28 of that Act (which relates to treatment provided to woman who agrees that second woman to be parent) who —
 - (i) is married to or the civil partner of the child's mother at the time of the child's birth; or
 - (ii) was married to or the civil partner of the child's mother at any time during the period beginning with the time mentioned in section 28(b) of that Act and ending with the child's birth;».
- (5) In section 16 (effect of residence order), after subsection (1) insert —
- «(1A) Where the High Court makes a residence order in favour of a woman who is a parent of a child by virtue of section 28 of the *Human Fertilisation and Embryology Act 2022* it shall, if that woman would not otherwise have parental responsibility for the child, also make an order under section 4A giving her that responsibility.».

- (6) In section 102(1) (interpretation – general), in the definition of “family proceedings”, after paragraph (b)(iv) insert —
- | «(v) section 39 or 40 of the *Human Fertilisation and Embryology Act 2022*;».
- (7) In Schedule 1 (financial provision for children), at the end of paragraph 3 insert —
- | «(4) In the case of a child who has a parent by virtue of section 27 or 28 of the *Human Fertilisation and Embryology Act 2022*, any reference in sub-paragraph (1), (2) or (3) to the child’s father is a reference to the woman who is a parent of the child by virtue of that section.».

5 Matrimonial Proceedings Act 2003 amended

- (1) The *Matrimonial Proceedings Act 2003* is amended as follows.
- (2) In section 138(1) (interpretation: general), in the definition of “family proceedings” —
- (a) in paragraph (b)(ii) omit “or section 89 of the *Children and Young Persons Act 2001*”; and
- (b) after paragraph (b)(iii) insert —
- | «(iv) section 39 or 40 of the *Human Fertilisation and Embryology Act 2022*;».

SCHEDULE 2

THE TEXT OF SECTIONS 86 TO 88 OF THE CHILDREN AND YOUNG PERSONS ACT 2001 (AS SAVED)

[Section 50(4)]

86 Meaning of “mother”

[P1990/37/27]

- (1) The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child.
- (2) Subsection (1) does not apply to any child to the extent that the child is treated by virtue of adoption as not being the child of any person other than the adopter or adopters.
- (3) For the purposes of this section it is immaterial where the woman was at the time of the placing in her of the embryo or the sperm and eggs.

87 Meaning of “father”

[P1990/37/28]

- (1) This section applies in the case of a child who is being or has been carried by a woman as the result of the placing in her of an embryo or of sperm and eggs or her artificial insemination.
- (2) If —
 - (a) at the time of the placing in her of the embryo or the sperm and eggs or of her insemination, the woman was a party to a marriage or in a civil partnership with a man, and
 - (b) the creation of the embryo carried by her was not brought about with the sperm of her husband or her civil partner,then, subject to subsection (5), her husband or her civil partner shall be treated as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs or to her insemination (as the case may be).
- (3) If no man is treated, by virtue of subsection (2), as the father of the child but —
 - (a) the embryo or the sperm and eggs were placed in the woman, or she was artificially inseminated, in the course of fertility services provided for her and a man together, and
 - (b) the creation of the embryo carried by her was not brought about with the sperm of that man,then, subject to subsection (5), that man shall be treated as the father of the child.
- (4) Where a person is treated as the father of the child by virtue of subsection (2) or (3), no other person is to be treated as the father of the child.
- (5) Subsections (2) and (3) do not apply —

- (a) to any child who, by virtue of the rules of common law, is treated as the legitimate child of the parties to a marriage, or
 - (b) to any child to the extent that the child is treated by virtue of adoption as not being the child of any person other than the adopter or adopters.
- (6) Where the sperm of a man, or any embryo the creation of which was brought about with his sperm, was used after his death, he is not to be treated as the father of the child.
- (7) The reference in subsection (2) to the parties to a marriage at the time there referred to —
- (a) is to the parties to a marriage subsisting at that time, unless a judicial separation was then in force, but
 - (b) includes the parties to a void marriage if either or both of them reasonably believed at the time that the marriage was valid;
- and for the purposes of this subsection it shall be presumed, unless the contrary is shown, that one of them reasonably believed at the time that the marriage was valid.
- (7A) The reference in subsection (2) to the woman being in a civil partnership with a man at the time there referred to —
- (a) is to the man and the woman being in a civil partnership subsisting at that time, unless a judicial separation was then in force, but
 - (b) includes the parties to a void civil partnership between the man and the woman if either or both of them reasonably believed at the time that the civil partnership was valid,
- and for the purposes of this subsection it shall be presumed, unless the contrary is shown, that one of them reasonably believed at the time that the civil partnership was valid.
- (8) For the purposes of this section it is immaterial where the woman was at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.
- (9) In subsection (7)(a) “judicial separation” includes a legal separation obtained in a country outside the British Islands and recognised in the Island.

88 Effect of sections 86 and 87

[P1990/37/29]

- (1) Where by virtue of section 86 or 87 a person is to be treated as the mother or father of a child, that person is to be treated in law as the mother or, as the case may be, the father of the child for all purposes.
- (2) Where by virtue of section 86 or 87 a person is not to be treated as the mother or father of a child, that person is to be treated in law as not being the mother or, as the case may be, the father of the child for any purpose.
- (3) Where subsection (1) or (2) has effect, references to any relationship between 2 people in any statutory provision, deed or other instrument or document (whenever made) are to be read accordingly.
- (4) Nothing in section 86(1) or 87(2) to (4), read with this section, affects —

- (a) the succession to any dignity or title of honour or renders any person capable of succeeding to or transmitting a right to succeed to any such dignity or title, or
 - (b) the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any dignity or title of honour.
- (5) Sections 86 and 87 and this section have effect only in relation to children carried by women as a result of the placing in them of embryos or of sperm or eggs, or of their artificial insemination (as the case may be), after the commencement of this section.