



**Law
Commission**
Reforming the law



Scottish Law Commission
promoting law reform

Building families through surrogacy: a new law

Volume III: Draft Surrogacy Bill

HC 1238

SG/2023/78

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Building families through surrogacy: a new law

Volume III: Draft Surrogacy Bill

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<https://www.scotlawcom.gov.uk/law-reform/law-reform-projects/joint-projects/surrogacy/>

Surrogacy Bill

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TO

Make provision about surrogacy; and for connected purposes.

BE IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

PARENTHOOD

CHAPTER 1

INTRODUCTORY

1 Introduction to Part 1

- (1) This Chapter—
 - (a) defines “surrogacy agreement” and other key terms, and
 - (b) provides that surrogacy agreements and other agreements relating to surrogacy are unenforceable.
- (2) Chapter 2 provides that, where certain conditions are met, a child carried by a woman who has entered into a surrogacy agreement with another individual or other individuals is, from the time of the child’s birth, to be treated in law as the child of that or those individuals.
- (3) Chapter 3 makes provision about applications to the court for a parental order in relation to a child carried by a woman who has entered into a surrogacy agreement with another individual or other individuals.
- (4) Chapter 4 provides that, where certain conditions are met, the spouse or civil partner of a woman who has entered into a surrogacy agreement is not to be treated in law as the parent of any child carried by the woman under the agreement.
- (5) Chapter 5—
 - (a) provides definitions for further terms used in this Part, and
 - (b) makes consequential amendments.

2 Meaning of “surrogacy agreement” and other key terms

- (1) In this Act “surrogacy agreement” means an agreement between a woman (“the surrogate”) and another individual or two other individuals (the “intended parent” or “intended parents”) that the surrogate is to undergo one or more relevant assisted reproduction procedures with a view to any child born as a result of such procedure being treated in law –
 - (a) as the child of the intended parent or parents, and
 - (b) as not being the child of the surrogate or any other individual.
- (2) In subsection (1) “relevant assisted reproduction procedure” means an assisted reproduction procedure using –
 - (a) the gametes of the intended parent or either or both of the intended parents, or
 - (b) an embryo the creation of which was brought about using the gametes of the intended parent or either or both of the intended parents.
- (3) A gamete is not a gamete of an intended parent for the purposes of subsection (2) if the gamete does not contain any nuclear DNA of the intended parent.
- (4) In this Act “assisted reproduction procedure” means –
 - (a) the placing of an embryo in a woman,
 - (b) the placing of sperm and eggs in a woman, or
 - (c) the artificial insemination of a woman.
- (5) In subsection (4) “egg” and “sperm” have the same meaning as in the Human Fertilisation and Embryology Act 1990 (see section 1 of that Act).

3 Unenforceability of surrogacy agreements etc

- (1) Neither of the following is enforceable by or against the individuals entering into it –
 - (a) a surrogacy agreement;
 - (b) any other agreement that a woman is to undergo one or more assisted reproduction procedures with a view to any child born as a result of such procedure being treated in law –
 - (i) as the child of an individual or individuals other than the woman, and
 - (ii) as not being the child of the woman.
- (2) An agreement, or a promise, by an individual to make a payment to another individual for, or in respect of, any of the following is unenforceable –
 - (a) the other individual entering into an agreement mentioned in subsection (1);
 - (b) where the individuals are parties to such an agreement –
 - (i) costs incurred by the other individual as a result of, or in connection with, being a party to the agreement;
 - (ii) the other individual withdrawing, or not withdrawing, from the agreement;

- (iii) the other individual completing a regulated surrogacy statement in relation to the agreement;
- (iv) the other individual withdrawing, or not withdrawing, consent to section 4(1) applying in relation to the agreement;
- (v) the other individual agreeing, or not agreeing, to the making of an order under Chapter 3 of this Part.

But see sections 44 and 45 for provision about the recovery of costs incurred by the surrogate from the intended parent or parents.

- (3) For the purposes of this section –
 - (a) “payment” includes payment in money’s worth;
 - (b) the reference to a payment being made to an individual includes a reference to a payment being made on behalf of that individual to another person;
 - (c) the reference to an individual agreeing, or promising, to make a payment includes a reference to that individual agreeing, or promising, that a payment is made on that individual’s behalf by another person.

CHAPTER 2

REGULATED SURROGACY AGREEMENTS

4 Parents of child where regulated surrogacy agreement

- (1) Where the conditions in section 8 are met, a child born as a result of an assisted reproduction procedure carried out under a regulated surrogacy agreement is, with effect from the time of the child’s birth, to be treated in law –
 - (a) as being the child of the intended parent or parents, and
 - (b) as not being the child of any other individual.
- (2) But subsection (1) does not apply to a child to the extent that the child is treated in law as not being the child of the intended parent or parents by virtue of adoption.
- (3) Sections 10 and 11 contain further exceptions to the application of subsection (1).
- (4) For the purposes of this Act, a “regulated surrogacy agreement” is a surrogacy agreement in relation to which a regulated surrogacy statement was completed before the surrogate underwent the procedure which resulted in the child’s birth.

5 Regulated surrogacy statement

- (1) In this Act “regulated surrogacy statement” means a document which –
 - (a) is signed by –
 - (i) the surrogate and the intended parent or parents, and

- (ii) a person acting on behalf of a body of persons holding a licence under section 52 (referred to in this Chapter as the “relevant regulated surrogacy organisation”),
 - (b) includes the statements required by subsections (2) to (4),
 - (c) includes the required identity information (see section 7), and
 - (d) meets any other requirements specified in regulations made by the Secretary of State.
- (2) The statement required by this subsection is a statement by the surrogate and intended parent or parents that they –
 - (a) are parties to a surrogacy agreement,
 - (b) consent to section 4(1) applying in relation to the agreement, and
 - (c) intend the home of any child born as a result of an assisted reproduction procedure carried out under the agreement to be with the intended parent or parents.
- (3) The statement required by this subsection is a statement by the relevant regulated surrogacy organisation that it –
 - (a) has carried out the pre-approval checks (see section 6),
 - (b) gives its approval to the surrogacy agreement being one to which section 4(1) applies, and
 - (c) before giving that approval, took into account all the circumstances of the case and in particular the welfare –
 - (i) of any child who may be born as a result of an assisted reproduction procedure carried out under the agreement (including any such child’s need for supportive parenting), and
 - (ii) of other children who may be affected by any such birth.
- (4) The statement required by this subsection is a statement recording that, if the surrogate gives birth to a child as a result of an assisted reproduction procedure carried out under the agreement after completion of the statement, the child will (subject to certain conditions being met) be treated in law on birth as the child of the intended parent or parents and not the child of any other individual.

6 Pre-approval checks

- (1) The relevant regulated surrogacy organisation has carried out the pre-approval checks for the purposes of section 5(3)(a) if it has satisfied itself as to the following matters.
- (2) That the surrogate and the intended parent or parents have undergone appropriate medical assessments.
- (3) That the surrogate and the intended parent or parents have received appropriate counselling about the implications of signing the regulated surrogacy statement.

- (4) That—
- (a) the surrogate and the intended parent or parents have received legal advice from a legal professional in relation to the effect of section 4 and, as appropriate, section 31 or 34, and
 - (b) it is not the same legal professional who has provided the advice to both the surrogate and to the intended parent or parents.
- (5) That the surrogate has taken out an appropriate insurance policy to cover—
- (a) the surrogate dying, and
 - (b) the surrogate becoming critically ill,
- with protection under the policy starting no later than the day on which the first assisted reproduction procedure is to be carried out under the agreement.
- (6) That the intended parent or parents have paid, or have offered to pay, the costs (referred to in this Act as “mandatory costs”) of—
- (a) any medical assessment undergone, or counselling received, by the surrogate for the purposes of subsections (2) and (3),
 - (b) the legal advice received by the surrogate for the purposes of subsection (4), and
 - (c) the premiums payable under the policy mentioned in subsection (5) in respect of the period specified in regulations made by the Secretary of State.
- (7) That a relevant criminal record check obtained in respect of each person connected to the surrogacy agreement does not disclose that any such person—
- (a) has been convicted of, or has admitted, an offence specified, or of a description specified, in regulations made by the Secretary of State, or
 - (b) has been convicted of, or has admitted, any other offence such that the relevant regulated surrogacy organisation considers that it is inappropriate for it to make the statement mentioned in section 5(3).
- (8) For the purposes of subsection (4), “legal professional” means—
- (a) in England and Wales, a person—
 - (i) who is a barrister in England and Wales,
 - (ii) whose name is on the roll of solicitors kept under section 6 of the Solicitors Act 1974,
 - (iii) authorised by the Chartered Institute of Legal Executives to practise as a member of the profession of legal executives, or
 - (iv) of a description specified in regulations made by the Secretary of State;
 - (b) in Scotland, a person who is—
 - (i) a member of the Faculty of Advocates,
 - (ii) a solicitor enrolled in the roll of solicitors kept under section 7 of the Solicitors (Scotland) Act 1980, or
 - (iii) of a description specified in regulations made by the Secretary of State.

- (9) For the purposes of subsection (7) –
- (a) the following persons are “connected” to a surrogacy agreement –
 - (i) the surrogate,
 - (ii) the intended parent or parents,
 - (iii) the surrogate’s spouse or civil partner (if she has one),
 - (iv) any individual who is aged 18 or over and living with the intended parent or either or both of the intended parents, and
 - (v) any other individual who is aged 18 or over and in respect of whom the relevant regulated surrogacy organisation considers it appropriate to obtain a relevant criminal record check;
 - (b) “relevant criminal record check” means –
 - (i) in England and Wales, an enhanced criminal record certificate under section 113B of the Police Act 1997 that was issued no more than 3 months before the day on which the regulated surrogacy statement is completed and includes suitability information relating to children (within the meaning of section 113BA(2) of that Act);
 - (ii) in Scotland, a Level 2 disclosure within the meaning of section 8 of the Disclosure (Scotland) Act 2020 provided under section 11 of that Act no more than 3 months before the day on which the regulated surrogacy statement is completed.
- (10) For the purposes of subsection (7), a person has admitted an offence if –
- (a) the person has been cautioned by a constable in respect of the offence, and
 - (b) at the time the caution was given, the offence was admitted.
- (11) Section 16 of the Disclosure (Scotland) Act 2020 (further information for certain purposes: non-PVG scheme members) applies to an application for a Level 2 disclosure for the purposes of subsection (7) as it applies to an application for such a disclosure for a purpose prescribed in regulations under section 16(1) of the Disclosure (Scotland) Act 2020 relating to children.

7 “Required identity information” for regulated surrogacy statement

- (1) For the purposes of section 5(1)(c), the “required identity information” means such information as the Secretary of State may specify in regulations about –
- (a) the surrogate,
 - (b) the intended parent or parents, and
 - (c) where a donor is to provide gametes for use, or for the creation of an embryo to be used, in an assisted reproduction procedure to be carried out under the agreement, the donor.
- (2) In subsection (1)(c) “donor” means an individual who is neither the surrogate nor an intended parent under the agreement.

- (3) Regulations under subsection (1) may specify information which, taken on its own or together with other information, identifies an individual or enables an individual to be identified.

8 Conditions relating to regulated surrogacy agreements

- (1) The conditions mentioned in section 4(1) are as follows.
- (2) At the time of entering into the surrogacy agreement –
 - (a) the surrogate was aged 21 or over, and
 - (b) the intended parent or parents were aged 18 or over.
- (3) Where there are two intended parents, the intended parents were in a close relationship with each other at the time of entering into the surrogacy agreement.
- (4) At the time that the surrogate underwent the procedure mentioned in section 4(1), neither the surrogate nor the intended parent, or none of the surrogate and the intended parents, had –
 - (a) withdrawn from the surrogacy agreement, or
 - (b) withdrawn their consent to section 4(1) applying in relation to the agreement.
- (5) At the time that the surrogate underwent the procedure mentioned in section 4(1), the relevant regulated surrogacy organisation had not withdrawn its approval to the surrogacy agreement being one to which section 4(1) applies.
- (6) The procedure mentioned in section 4(1) was carried out in the United Kingdom.
- (7) The surrogate did not, while she was carrying the child, withdraw her consent to section 4(1) applying in relation to the agreement.
But see section 9 for provision about the effectiveness of any such withdrawal.
- (8) At the relevant times –
 - (a) the surrogate, and
 - (b) the intended parent or either or both of the intended parents,were domiciled, or habitually resident, in the United Kingdom or in the Channel Islands or the Isle of Man.
- (9) In subsection (8) “the relevant times” means –
 - (a) the time at which the surrogate or the intended parent signed the regulated surrogacy statement, and
 - (b) except where the surrogate or intended parent has died before the birth of the child, the birth of the child.

9 Surrogate withdrawing her consent to section 4(1) applying to agreement

- (1) The surrogate's withdrawal of consent is effective for the purposes of section 8(7) only if, before the child's birth, the surrogate gives notice of her withdrawal to—
 - (a) the intended parent or either or both of the intended parents, and
 - (b) the relevant regulated surrogacy organisation.But see subsections (2) and (3) which provide exceptions to the requirement to give notice.
- (2) Subsection (1)(a) does not apply if—
 - (a) at the time of the child's birth, the intended parent or, in a case where there are two intended parents, both of the intended parents have died, or
 - (b) despite the surrogate taking reasonable steps, the intended parent cannot, or in a case where there are two intended parents, neither of the intended parents can, be traced by the surrogate before the child's birth.
- (3) Subsection (1)(b) does not apply if, at the time of the child's birth, the body of persons that formed the relevant regulated surrogacy organisation no longer exists.
- (4) The Secretary of State may by regulations make further provision about the giving of notice under subsection (1).
- (5) In this section "notice" means notice—
 - (a) in writing, or
 - (b) in an audio or audio-visual recording.

10 Death of intended parent before assisted reproduction procedure

- (1) Section 4(1) does not apply where—
 - (a) the surrogacy agreement was entered into by only one intended parent and that intended parent has died in the circumstances mentioned in subsection (2), or
 - (b) the surrogacy agreement was entered into by two intended parents and both of them have died in the circumstances mentioned in subsection (2).
- (2) An intended parent has died in the circumstances mentioned in this subsection if—
 - (a) the intended parent's death occurred before the assisted reproduction procedure mentioned in section 4(1) was carried out, and
 - (b) the surrogate was aware of the intended parent's death at the time that the procedure was carried out.
- (3) Subsections (5) to (8) apply if one only of two intended parents under a surrogacy agreement has died in the circumstances mentioned in subsection (2).

- (4) In subsections (5) to (8) –
 - (a) references to “the deceased intended parent” are to the intended parent who has died in the circumstances mentioned in subsection (2), and
 - (b) references to “the surviving intended parent” are to the other intended parent (and include an intended parent who has died otherwise than in the circumstances mentioned in subsection (2)).
- (5) Where this subsection applies –
 - (a) section 4(1) has effect as if –
 - (i) in paragraph (a), the reference to the intended parent or parents were a reference to the surviving intended parent, and
 - (ii) in paragraph (b), at the beginning, the words “except to the extent provided by an order under section 10(5)(b),” were inserted, and
 - (b) if section 4(1) applies in relation to the surviving intended parent, the court may, on an application made by the surviving intended parent, make an order providing that the deceased intended parent is to be treated for the purpose mentioned in subsection (8) as a parent of the child.
- (6) The court may make an order under subsection (5)(b) only if the gametes of the deceased intended parent were used to bring about the creation of the embryo from which the child developed.
- (7) A gamete is not a gamete of an intended parent for the purposes of subsection (6) if the gamete does not contain any nuclear DNA of the intended parent.
- (8) The purpose referred to in subsection (5)(b) is the purpose of enabling the deceased intended parent’s particulars to be entered as the particulars of the child’s parent in –
 - (a) a register of live-births kept under the Births and Deaths Registration Act 1953, or
 - (b) a register of births kept under the Registration of Births, Deaths and Marriages (Scotland) Act 1965.
- (9) In this section, “the court” –
 - (a) in relation to England and Wales, means the High Court or the family court;
 - (b) in relation to Scotland, means the Court of Session or a sheriff of the sheriffdom –
 - (i) within which the child is when the application under subsection (5)(b) is made, or
 - (ii) if the child has died before the application is made, where the person making the application resides.

11 Effect and application of section 4

- (1) Subject to the following provisions, where section 4(1) has effect it applies for the interpretation of enactments, instruments or other documents (whenever passed or made).
- (2) In relation to England and Wales, section 4(1) does not—
 - (a) affect the succession to any dignity or title of honour or render any person capable of succeeding to or transmitting a right to succeed to any such dignity or title, or
 - (b) affect 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.
- (3) In relation to Scotland—
 - (a) section 4(1) does not apply to any title, coat of arms, honour or dignity transmissible on the death of its holder or affect the succession to any such title, coat of arms or dignity or its devolution, and
 - (b) where the terms of any deed provide that any property or interest in property is to devolve along with a title, coat of arms, honour or dignity, nothing in section 4(1) is to prevent that property or interest from so devolving.
- (4) The reference in section 4(1) to a child who is born is a reference to a child who is born alive.
- (5) Section 4(1)(b) does not apply for the following purposes—
 - (a) the purposes of—
 - (i) section 1 of, and Schedule 1 to, the Marriage Act 1949 (prohibited degrees of kindred and affinity),
 - (ii) Schedule 1 to the Civil Partnership Act 2004 (prohibited degrees of kindred and affinity), and
 - (iii) sections 64 and 65 of the Sexual Offences Act 2003 (sex with an adult relative);
 - (b) the purposes of determining the forbidden degrees of consanguinity and affinity in respect of the law as it extends to Scotland—
 - (i) relating to marriage,
 - (ii) relating to the eligibility of persons to register as civil partners of each other, and
 - (iii) in respect of the crime of incest.
- (6) A child who has a parent or parents by virtue of section 4(1) is the legitimate child of that parent or those parents.

12 Interpretation of references to mother or father

- (1) Subsections (2) and (3) apply for the interpretation of a reference to the mother or to the father of a child in any enactment, instrument or other document

(whenever passed or made) in the case of a child who has a parent or parents by virtue of section 4(1).

- (2) A reference (however expressed) to the mother or to the father of a child is—
 - (a) in the case of a child who has one parent by virtue of that section, a reference to that parent;
 - (b) in the case of a child who has two parents by virtue of that section, a reference to either of those parents.
- (3) A reference (however expressed) to the mother and father of a child is—
 - (a) in the case of a child who has one parent by virtue of that section, a reference to that parent;
 - (b) in the case of a child who has two parents by virtue of that section, a reference to both of those parents.
- (4) But subsections (2) and (3) do not apply—
 - (a) where a contrary intention appears, or
 - (b) insofar as section 4(1), read with section 11, does not have effect, or apply, in relation to the interpretation of the enactment, instrument or other document.

13 Declarations of parentage (England and Wales)

In section 55A of the Family Law Act 1986 (declarations of parentage), after subsection (7) insert—

- “(8) Subsection (5) does not apply where the determination of the application would involve determining whether a child has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.”

CHAPTER 3

PARENTAL ORDERS

14 Application for parental order: introductory

Sections 15 to 19 apply where—

- (a) a child is born as a result of an assisted reproduction procedure carried out under a surrogacy agreement, and
- (b) section 4(1) does not apply in relation to the child.

15 Application where one intended parent under the surrogacy agreement

- (1) This section applies where the surrogacy agreement was entered into by only one intended parent.
- (2) On an application made by the intended parent, the court may make an order providing for the child to be treated in law as the child of the intended parent.
- (3) The court may make an order under this section only if—

- (a) the conditions in section 16 are met, and
- (b) an order relating to the child has not previously been made under this Chapter, unless the order has been quashed or an appeal against the order has been allowed.

16 Conditions for the purposes of section 15

- (1) The conditions mentioned in section 15(3)(a) are as follows.
- (2) At the time of entering into the surrogacy agreement—
 - (a) the surrogate was aged 21 or over, and
 - (b) the intended parent was aged 18 or over.
- (3) The application for the order is made—
 - (a) during the period of 6 months beginning with the day of the child's birth, or
 - (b) after the end of that period with the permission of the court.
- (4) At the time both of the application and of the making of the order the child's home is with the intended parent.
- (5) At the time both of the application and of the making of the order the intended parent is domiciled, or habitually resident, in the United Kingdom or in the Channel Islands or the Isle of Man.
- (6) The court is satisfied that the surrogate has freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.
- (7) But subsection (6) does not apply if the court is satisfied that—
 - (a) the surrogate has died, cannot be found or is incapable of agreeing, or
 - (b) the welfare of the child requires the condition in that subsection to be dispensed with.
- (8) The surrogate's agreement is ineffective for the purposes of subsection (6) if given before the end of the period of 6 weeks beginning with the day of the child's birth.
- (9) Except where the court dispenses with the requirement, the intended parent has provided the court with the required identity information in relation to the surrogacy agreement (see section 23).
- (10) No payment has been made by the intended parent to the surrogate within the regulated payment period other than—
 - (a) a payment in respect of mandatory costs, or
 - (b) a payment (whether or not in respect of permitted costs) authorised by the court.

See section 20 for further provision about this condition (including the length of the regulated payment period).

- (11) Where the surrogacy agreement was entered into before the commencement of this section, this section has effect as if paragraph (b) of subsection (7) were omitted.

17 Application where two intended parents under the surrogacy agreement

- (1) This section applies where the surrogacy agreement was entered into by two intended parents.
- (2) On an application made by one only of the intended parents, the court may make one of the following orders—
- (a) an order providing for the child to be treated in law as the child of that intended parent,
 - (b) an order providing for the child to be treated in law as the child of the other intended parent, or
 - (c) an order providing for the child to be treated in law as the child of both of the intended parents.
- (3) On an application made by both of the intended parents, the court may make an order providing for the child to be treated in law as the child of both of the intended parents.
- (4) The court may make an order under this section only if—
- (a) the conditions in section 18 are met, and
 - (b) an order relating to the child has not previously been made under this Chapter, unless the order has been quashed or an appeal against the order has been allowed.

18 Conditions for the purposes of section 17

- (1) The conditions mentioned in section 17(4)(a) are as follows.
- (2) At the time of entering into the surrogacy agreement—
- (a) the surrogate was aged 21 or over, and
 - (b) the intended parents were aged 18 or over.
- (3) At the time of entering into the surrogacy agreement, the intended parents were in a close relationship with each other.
- (4) The application for the order is made—
- (a) during the period of 6 months beginning with the day of the child's birth, or
 - (b) after the end of that period with the permission of the court.
- (5) At the time both of the application and of the making of the order the child's home is—
- (a) if the order is to be made in relation to both of the intended parents, with both of the intended parents, or

- (b) if the order is to be made in relation to one only of the intended parents, with that intended parent (whether or not also with the other intended parent).
- (6) At the time both of the application and of the making of the order—
 - (a) if the order is to be made in relation to both of the intended parents, at least one of the intended parents is domiciled, or habitually resident, in the United Kingdom or in the Channel Islands or the Isle of Man, or
 - (b) if the order is to be made in relation to one only of the intended parents, that intended parent is domiciled, or habitually resident, in the United Kingdom or in the Channel Islands or the Isle of Man.
- (7) The court is satisfied that the surrogate has freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.
- (8) But subsection (7) does not apply if the court is satisfied that—
 - (a) the surrogate has died, cannot be found or is incapable of agreeing, or
 - (b) the welfare of the child requires the condition in that subsection to be dispensed with.
- (9) The surrogate’s agreement is ineffective for the purposes of subsection (7) if given before the end of the period of 6 weeks beginning with the day of the child’s birth.
- (10) Except where the court dispenses with the requirement, the intended parent, or either or both of the intended parents, has provided the court with the required identity information in relation to the surrogacy agreement (see section 23).
- (11) No payment has been made by either of the intended parents to the surrogate within the regulated payment period other than—
 - (a) a payment in respect of mandatory costs, or
 - (b) a payment (whether or not in respect of permitted costs) authorised by the court.

See section 20 for further provision about this condition (including the length of the regulated payment period).
- (12) Where the surrogacy agreement was entered into before the commencement of this section, this section has effect as if paragraph (b) of subsection (8) were omitted.

19 Application by surrogate for order that intended parent or parents are parent of child

- (1) On an application made by the surrogate, the court may make an order providing for the child to be treated in law—
 - (a) where there is only one intended parent under the surrogacy agreement, as the child of the intended parent;

- (b) where there are two intended parents under the surrogacy agreement, as the child of both of the intended parents.
- (2) The court may make an order under subsection (1) only if—
 - (a) the conditions set out in subsections (3) to (8) are met, and
 - (b) an order relating to the child has not previously been made under this Chapter, unless the order has been quashed or an appeal against the order has been allowed.
- (3) At the time of entering into the surrogacy agreement—
 - (a) the surrogate was aged 21 or over, and
 - (b) the intended parent or parents were aged 18 or over.
- (4) Where there are two intended parents under the surrogacy agreement, at the time of entering into the agreement the intended parents were in a close relationship with each other.
- (5) The application for the order is made—
 - (a) during the period of 6 months which begins at the end of the period of 6 months beginning with the day of the child’s birth, or
 - (b) after the end of that period with the permission of the court.
- (6) At the time both of the application and of the making of the order the intended parent, or at least one of the intended parents, is domiciled, or habitually resident, in the United Kingdom or in the Channel Islands or the Isle of Man.
- (7) Except where the court dispenses with the requirement, the surrogate has provided the court with the required identity information in relation to the surrogacy agreement (see section 23).
- (8) No payment has been made by the intended parent or by either of the intended parents to the surrogate within the regulated payment period other than—
 - (a) a payment in respect of mandatory costs, or
 - (b) a payment (whether or not in respect of permitted costs) authorised by the court.

See section 20 for further provision about this condition (including the length of the regulated payment period).

20 Further provision relating to payments condition

- (1) In deciding whether to authorise a payment for the purposes of section 16(10)(b), 18(11)(b) or 19(8)(b), the court must have regard to the principle that the surrogate should be neither better nor worse off financially as a result of the surrogacy agreement.
- (2) In section 16(10), 18(11) and 19(8)—
 - “permitted costs” has the meaning given by section 40(1);
 - “regulated payment period” means the period—

- (a) beginning one year before the day on which the surrogacy agreement was entered into, and
 - (b) ending with the making of the order.
- (3) In section 16(10), 18(11) and 19(8) and this section—
 - (a) “payment” includes a payment in money’s worth;
 - (b) references to a payment being made by the intended parent or parents include references to a payment being made by another person on behalf of the intended parent or parents;
 - (c) references to a payment being made to the surrogate include references to a payment being made to another person on behalf of the surrogate.

21 Application by surrogate for order that surrogate is parent of child

- (1) This section applies where a child has a parent or parents by virtue of section 4(1).
- (2) On an application made by the surrogate, the court may make an order providing for the child to be treated in law as the surrogate’s child.
- (3) The court may make an order under this section only if the following conditions are met.
- (4) The application for the order is made during the period of 6 months beginning with the day of the child’s birth.
- (5) Before the end of the period of 6 weeks beginning with the day of the child’s birth (the “relevant period”) the surrogate has—
 - (a) decided that she wants to be treated in law as the parent of the child, and
 - (b) given notice of her decision to—
 - (i) the intended parent or either or both of the intended parents, and
 - (ii) the relevant regulated surrogacy organisation in relation to the surrogacy agreement.

Paragraph (b) is subject to subsections (6) and (7).

- (6) Subsection (5)(b)(i) does not apply if—
 - (a) before the end of the relevant period, the intended parent or, in a case where there are two intended parents, both of the intended parents have died, or
 - (b) despite the surrogate taking reasonable steps, the intended parent cannot, or in a case where there are two intended parents, neither of the intended parents can, be traced by the surrogate before the end of the relevant period.
- (7) Subsection (5)(b)(ii) does not apply if, before the end of the relevant period, the body of persons that formed the relevant regulated surrogacy organisation has ceased to exist.

- (8) At the time both of the application and of the making of the order the surrogate is domiciled or habitually resident in the United Kingdom or in the Channel Islands or the Isle of Man.
- (9) Except where the court dispenses with the requirement, the surrogate has provided the court with the required identity information in relation to the surrogacy agreement (see section 23).
- (10) The Secretary of State may by regulations make further provision about the giving of notice under subsection (5).
- (11) In this section—
 - “notice” means notice—
 - (a) in writing, or
 - (b) in an audio or audio-visual recording;
 - “relevant regulated surrogacy organisation”, in relation to a surrogacy agreement, means the body of persons who made the statement mentioned in section 5(3).

22 Orders where the child, intended parent or surrogate has died

Schedule 1 makes provision about court orders where any of the following has or have died—

- (a) the child,
- (b) the intended parent or either or both of the intended parents, or
- (c) the surrogate.

23 “Required identity information” for parental order application

- (1) For the purposes of sections 16(9), 18(10), 19(7) and 21(9) the “required identity information”, in relation to a surrogacy agreement, means such information as the Secretary of State may specify in regulations about—
 - (a) the surrogate,
 - (b) the intended parent or parents,
 - (c) the child in relation to whom the application is made, and
 - (d) where the gametes of a donor were used in the creation of the embryo from which the child developed, the donor.
- (2) In subsection (1) “donor” means an individual who is neither the surrogate nor an intended parent under the surrogacy agreement.
- (3) Regulations under subsection (1) may specify information which, taken on its own or together with other information, identifies an individual or enables an individual to be identified.

24 Informing the Human Fertilisation and Embryology Authority

- (1) On the conclusion of proceedings before a court on an application under section 15, 17, 19 or 21, a prescribed officer of the court must give the Human

Fertilisation and Embryology Authority (referred to in this Act as “the HFEA”) any prescribed information that the court holds in respect of—

- (a) the child who is the subject of the application;
 - (b) the woman who carried that child;
 - (c) an intended parent in relation to that child;
 - (d) an individual whose gametes were used to bring about the creation of the embryo from which that child developed;
 - (e) a person involved in organising or carrying out an assisted reproduction procedure as a result of which that child was born.
- (2) The prescribed officer must give the information in the prescribed form and manner.
- (3) For the purposes of subsection (1), proceedings conclude when—
- (a) the court makes an order under section 15, 17, 19 or 21 (as appropriate),
 - (b) the court declines to make such an order,
 - (c) the application is withdrawn, or
 - (d) the application is otherwise discontinued.
- (4) In this section “prescribed” means prescribed by rules of court.

25 Parental orders: supplementary provision

- (1) The Secretary of State may by regulations provide—
- (a) for any provision of the enactments about adoption to have effect, with such modifications as may be specified in the regulations, in relation to orders under section 15, 17, 19 or 21 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 (including this Act)—
 - (i) to adoption to be read as references to the effect of an order under section 15, 17, 19 or 21;
 - (ii) to an adopted child to be read as references to a child in relation to whom such an order is made;
 - (iii) to an adoptive relationship to be read as references to a relationship arising by virtue of the enactments about adoption, as applied by the regulations;
 - (iv) to similar expressions in connection with adoption to be read accordingly.
- (2) In this section “the enactments about adoption” means—
- (a) the Adoption and Children Act 2002, and
 - (b) the Adoption and Children (Scotland) Act 2007 (asp 4).
- (3) For the purposes of an application under this Chapter, “the court”—
- (a) in relation to England and Wales, means the High Court or the family court;

- (b) in relation to Scotland, means the Court of Session or a sheriff of the sheriffdom –
 - (i) within which the child is when the application is made, or
 - (ii) if the child has died before the application is made, where the person making the application resides.

26 Repeals and transitional provision in relation to Chapter 3

- (1) In the Human Fertilisation and Embryology Act 2008, omit sections 54 and 54A (parental orders).
- (2) Despite their repeal by subsection (1), sections 54 and 54A of the Human Fertilisation and Embryology Act 2008 continue to have effect in relation to a child born as a result of an assisted reproduction procedure carried out before the commencement of subsection (1).
- (3) Sections 14 to 19 of this Act do not have effect in relation to a child born as a result of an assisted reproduction procedure carried out before the commencement of subsection (1).

CHAPTER 4

SPOUSE OR CIVIL PARTNER OF SURROGATE

27 Spouse or civil partner of surrogate not to be treated as parent

- (1) This section applies in relation to a person if –
 - (a) a child is born as a result of an assisted reproduction procedure carried out under a surrogacy agreement, and
 - (b) the person was, at any time during the relevant period, the spouse or civil partner of the surrogate under the agreement.
- (2) Subject to subsection (3), the person is not to be treated in law as the parent of the child if at the time of entering into the agreement –
 - (a) the surrogate was aged 21 or over, and
 - (b) the intended parent or parents were aged 18 or over.
- (3) Subsection (2) does not apply to a person who is treated as parent of the child by virtue of –
 - (a) adoption, or
 - (b) section 4 (regulated surrogacy agreements).
- (4) Subsection (2) applies even if one or more of the parties to the surrogacy agreement have withdrawn from the agreement.
- (5) For the purposes of subsection (1), the “relevant period” is the period –
 - (a) beginning when the assisted reproduction procedure was carried out, and
 - (b) ending when the child was born.

- (6) References in this section to the birth of a child include references to the still-birth of a child.
- (7) Where subsection (2) applies, it applies for the interpretation of enactments, instruments or other documents whenever passed or made.
But see subsections (8) and (9).
- (8) Subsection (2) does not apply for the following purposes—
- (a) the purposes of—
 - (i) section 1 of, and Schedule 1 to, the Marriage Act 1949 (prohibited degrees of kindred and affinity),
 - (ii) Schedule 1 to the Civil Partnership Act 2004 (prohibited degrees of kindred and affinity), and
 - (iii) sections 64 and 65 of the Sexual Offences Act 2003 (sex with an adult relative);
 - (b) the purposes of determining the forbidden degrees of consanguinity and affinity in respect of the law as it extends to Scotland—
 - (i) relating to marriage,
 - (ii) relating to the eligibility of persons to register as civil partners of each other, and
 - (iii) in respect of the crime of incest.
- (9) The Secretary of State may by regulations provide for further exceptions to the application of subsection (2).
- (10) This section has effect only in relation to a child born as a result of an assisted reproduction procedure carried out after the day on which this section comes into force.
- (11) In section 5 of the Law Reform (Parent and Child) (Scotland) Act 1986, after subsection (4) insert—
- “(5) Subsection (1) does not apply if the child was carried as a result of an assisted reproduction procedure carried out under a surrogacy agreement—
 - (a) in the circumstances mentioned in subsection (2) of section 27 of the Surrogacy Act 2023, as read with subsection (4) of that section,
 - (b) carried out after the commencement of that section.
 - (6) In this section “assisted reproduction procedure” and “surrogacy agreement” have the same meaning as in section 2(1) of the Surrogacy Act 2023.”

CHAPTER 5

GENERAL PROVISION IN RELATION TO PART 1

Interpretation

28 Meaning of “close relationship”

- (1) This section applies for the purposes of this Part.
- (2) Two persons are in a close relationship with each other if –
 - (a) they are married to each other,
 - (b) they are civil partners of each other, or
 - (c) they are living as partners in an enduring family relationship and are not within prohibited degrees of relationship in relation to each other.
- (3) For the purposes of subsection (2)(c), two persons are within prohibited degrees of relationship if one is the other’s parent, grandparent, sister, brother, aunt or uncle.
- (4) In subsection (3) references to relationships –
 - (a) are to relationships of the full blood or half blood, and
 - (b) include relationships that would subsist but for the operation of section 27 (spouse or civil partner of surrogate not to be treated as parent).
- (5) In the case of an adopted person, in subsection (3) references to relationships –
 - (a) are to relationships of the full blood or half blood that would subsist but for the adoption,
 - (b) include the relationship of a person with the person’s adoptive or former adoptive parent or parents, and
 - (c) do not include any other adoptive relationships.
- (6) In the case of a person who has a parent or parents by virtue of section 4(1), in subsection (3) references to relationships –
 - (a) are to relationships of the full blood or half blood that would subsist but for the operation of section 4(1),
 - (b) include the relationship of a person with the person’s parent or parents as a result of the operation of section 4(1), and
 - (c) do not include any other relationship of a person arising as a result of the operation of section 4(1).
- (7) For the purposes of subsection, (5) “adopted person” –
 - (a) in relation to England and Wales, means an adopted person within the meaning of Chapter 4 of Part 1 of the Adoption and Children Act 2002 (see section 66 of that Act);
 - (b) in relation to Scotland, means an adopted person within the meaning of Chapter 3 of Part 1 of the Adoption and Children (Scotland) Act 2007 (see section 39 of that Act).

29 Other interpretative provision for Part 1

- (1) In this Part “adoption” –
 - (a) in relation to England and Wales, has the same meaning as in Chapter 4 of Part 1 of the Adoption and Children Act 2002 (see section 66 of that Act);
 - (b) in relation to Scotland, has the same meaning as in Chapter 3 of Part 1 of the Adoption and Children (Scotland) Act 2007 (see section 39 of that Act).
- (2) The references in Chapters 3 and 4 to an assisted reproduction procedure include a procedure carried out outside the United Kingdom.

Consequential amendments

30 Consequential amendments

Schedule 2 contains amendments consequential on this Part.

PART 2

PARENTAL RESPONSIBILITY (ENGLAND AND WALES) AND PARENTAL RESPONSIBILITIES AND PARENTAL RIGHTS (SCOTLAND)

31 Parental responsibility (England and Wales): regulated surrogacy agreements

- (1) Where a child has a parent or parents by virtue of section 4(1), the surrogate has parental responsibility for the child.
See also section 2 of the Children Act 1989 which confers parental responsibility on the intended parent or parents.
- (2) The parental responsibility that the surrogate has by virtue of subsection (1) is extinguished at the end of the period of 6 weeks beginning with the day of the child’s birth unless before the end of that period the surrogate has –
 - (a) reached the decision mentioned in section 21(5)(a), and
 - (b) given notice of her decision as mentioned in section 21(5)(b) when read with section 21(6) and (7).
- (3) The parental responsibility that the surrogate has by virtue of subsection (1) is (if not already extinguished by virtue of subsection (2)) extinguished if –
 - (a) the surrogate applies for an order under section 21 (application for order that surrogate is parent of child) and the application is withdrawn or finally determined with no such order being made, or
 - (b) the surrogate does not make an application for such an order before the end of the period of 6 months beginning with the day of the child’s birth.
- (4) The parental responsibility that the intended parent or parents have by virtue of section 2 of the Children Act 1989 is extinguished if, before the end of the period of 6 weeks beginning with the day of the child’s birth, the surrogate –

- (a) reaches the decision mentioned in section 21(5)(a), and
 - (b) gives notice of her decision as mentioned in section 21(5)(b) when read with section 21(6) and (7).
- (5) But subsection (4) does not apply if, at the time that the surrogate reaches her decision, the child is living with, or being cared for by, the intended parent or at least one of the intended parents.
- (6) The Secretary of State may by regulations make further provision about the giving of notice under this section.
- (7) For the purposes of this section and section 32—
 - (a) an application is not to be taken as having been finally determined if an appeal in relation to the application, or a subsequent appeal, is pending, and
 - (b) an appeal is to be treated as pending if—
 - (i) an appeal has been brought and has not been determined or withdrawn, or
 - (ii) no appeal has been brought and the period for bringing one is still running (ignoring the possibility of an appeal out of time).

32 Parental responsibility (England and Wales): other surrogacy agreements

- (1) Subsection (3) applies where—
 - (a) a child is born as a result of an assisted reproduction procedure carried out under a surrogacy agreement,
 - (b) the child does not have a parent or parents by virtue of section 4(1), and
 - (c) the conditions in subsection (2) are met.
- (2) The conditions in this subsection are that—
 - (a) the child has from birth lived with, or been cared for by, the intended parent or either or both of the intended parents,
 - (b) at the time of entering into the surrogacy agreement—
 - (i) the surrogate was aged 21 or over, and
 - (ii) the intended parent or parents were aged 18 or over,
 - (c) at the time of the child's birth the intended parent, or at least one of the intended parents, was domiciled, or habitually resident, in the United Kingdom or in the Channel Islands or the Isle of Man, and
 - (d) where there are two intended parents, at the time of entering into the agreement the intended parents were in a close relationship with each other.
- (3) Where this subsection applies the intended parent or both of the intended parents have parental responsibility for the child.
- (4) The parental responsibility that the intended parent or intended parents have by virtue of subsection (3) is extinguished if—

- (a) an application is made for an order in relation to the child under section 15 or 17 (application for order that intended parent is parent of child) and the application is withdrawn or finally determined with no such order being made,
 - (b) no application for an order under either of those sections is made before the end of the period of 6 months beginning with the day of the child’s birth, or
 - (c) the condition in subsection (2)(a) ceases to be met.
- (5) In subsection (2)(d) “close relationship” has the same meaning as in Part 1 (see section 28).

33 Entitlement to apply for child arrangements orders etc (England and Wales)

- (1) Section 10 of the Children Act 1989 (power of court to make child arrangements orders and other orders under section 8) is amended as follows.
- (2) In subsection (4), after paragraph (aa) insert –
- “(ab) any person who has parental responsibility for the child under section 31 or 32 of the Surrogacy Act 2023 (parental responsibility where surrogacy agreement entered into);”.
- (3) After subsection (4) insert –
- “(4A) Any intended parent of a child is entitled to apply for a section 8 order with respect to the child if –
- (a) an application has been made (whether or not by the intended parent) in respect of the child under Chapter 3 of Part 1 of the Surrogacy Act 2023 (parental orders), and
 - (b) the application has not yet been finally determined.
- (4B) For the purposes of subsection (4A) –
- (a) “intended parent” has the same meaning as in the Surrogacy Act 2023 (see section 2(1) of that Act), and
 - (b) paragraph (b) is to be read in accordance with section 31(7) of that Act.”

34 Parental responsibilities and parental rights (Scotland): regulated surrogacy agreements

- (1) Where a child has a parent or parents by virtue of section 4(1) –
- (a) that parent or those parents have parental responsibilities and parental rights in relation to the child, and
 - (b) the surrogate has parental responsibilities and parental rights in relation to the child.
- (2) The parental responsibilities and parental rights that the intended parent or parents have by virtue of subsection (1)(a) are extinguished if, before the end

of the period of 6 weeks beginning with the day of the child's birth, the surrogate –

- (a) reaches the decision mentioned in section 21(5)(a), and
 - (b) gives notice of her decision as mentioned in section 21(5)(b) when read with section 21(6) and (7).
- (3) But subsection (2) does not apply if, at the time that the surrogate reaches her decision, the child is living with, or being cared for by, the intended parent or at least one of the intended parents.
- (4) The parental responsibilities and parental rights that the surrogate has by virtue of subsection (1)(b) are extinguished at the end of the period of 6 weeks beginning with the day of the child's birth, unless before the end of that period the surrogate has –
 - (a) reached the decision mentioned in section 21(5)(a), and
 - (b) given notice of her decision as mentioned in section 21(5)(b) when read with section 21(6) and (7).
- (5) The parental responsibilities and parental rights that the surrogate has by virtue of subsection (1)(b) are (if not already extinguished by virtue of subsection (4)) extinguished if –
 - (a) the surrogate applies for an order under section 21 (application for order that surrogate is parent of child) and the application is withdrawn or finally determined with no such order being made, or
 - (b) the surrogate does not make an application for such an order before the end of the period of 6 months beginning with the day of the child's birth.
- (6) The Secretary of State may by regulations make further provision about the giving of notice under this section.
- (7) For the purposes of this section and section 35 –
 - (a) an application is not to be taken as having been finally determined if an appeal in relation to the application, or a subsequent appeal, is pending, and
 - (b) an appeal is to be treated as pending if –
 - (i) an appeal has been made and has not been determined or withdrawn, or
 - (ii) no appeal has been made and the period for bringing one is still running (ignoring the possibility of an appeal out of time).

35 Parental responsibilities and parental rights (Scotland): other surrogacy agreements

- (1) Subsection (3) applies where –
 - (a) a child is born as a result of an assisted reproduction procedure carried out under a surrogacy agreement,
 - (b) the child does not have a parent or parents by virtue of section 4(1), and

- (c) the conditions in subsection (2) are met.
- (2) The conditions in this subsection are that—
 - (a) the child has from birth lived with, or been cared for by, the intended parent or at least one of the intended parents,
 - (b) at the time of entering into the surrogacy agreement—
 - (i) the surrogate was aged 21 or over, and
 - (ii) the intended parent or both of the intended parents were aged 18 or over,
 - (c) at the time of the child’s birth the intended parent, or at least one of the intended parents, was domiciled, or habitually resident, in the United Kingdom or in the Channel Islands or the Isle of Man, and
 - (d) where there are two intended parents, at the time of entering into the agreement the intended parents were in a close relationship with each other.
- (3) Where this subsection applies the intended parent or both of the intended parents have parental responsibilities and parental rights in relation to the child.
- (4) The parental responsibilities and parental rights that the intended parent or intended parents have by virtue of subsection (3) are extinguished if—
 - (a) an application is made for an order in relation to the child under section 15 or 17 (application for order that intended parent is parent of child) and the application is withdrawn or finally determined with no such order being made,
 - (b) no application for an order under either of those sections is made before the end of the period of 6 months beginning with the day of the child’s birth, or
 - (c) the condition in subsection (2)(a) ceases to be met.
- (5) In subsection (2)(d) “close relationship” has the same meaning as in Part 1 (see section 28).

36 Parental responsibilities and parental rights (Scotland): supplementary

- (1) The Children (Scotland) Act 1995 is amended as follows.
- (2) In section 1(1), after “(d)” insert “, (1B)”.
- (3) In section 2(1), after “(d)” insert “, (1B)”.
- (4) In section 3, after subsection (1A) insert—
 - “(1B) Where a child is born as a result of an assisted reproduction procedure carried out under a surrogacy agreement—
 - (a) sections 1 and 2 do not apply if the child has a parent or parents by virtue of section 4 of the Surrogacy Act 2023 (see section 34 of that Act for provision about parental responsibilities and parental rights in such a case),

- (b) section 35 of that Act makes further provision about parental responsibilities and parental rights in certain cases where the child does not have a parent or parents by virtue of section 4 of that Act.

(1C) In subsection (1B), “assisted reproduction procedure” and “surrogacy agreement” have the meanings given by section 2 of the Surrogacy Act 2023.”

- (5) In section 15 (interpretation of Part 1), in subsection (1), in the definition of “parent” after “(asp 4)” insert “and section 4 of the Surrogacy Act 2023”.

37 Interim orders relating to parental responsibilities and parental rights (Scotland)

- (1) This section applies where an application is made under section 15, 17 or 19 to the Court of Session or a sheriff in respect of a child.
- (2) The Court or sheriff may, before the application is determined, make an interim order conferring parental responsibilities and parental rights on an intended parent of the child.
- (3) The Court or sheriff may make an order under subsection (2) –
 - (a) on the application of an intended parent, or
 - (b) of the Court’s or the sheriff’s own volition.
- (4) Sections 11ZA (paramountcy of child’s welfare, and the non-intervention presumption) and 11ZB (regard to be had to the child’s views) of the Children (Scotland) Act 1995 apply in relation to an order under subsection (2) as they apply in relation to an order under section 11(1) of that Act.
- (5) An order under subsection (2) ceases to have effect when the application under section 15, 17 or 19 to which it relates is determined.

38 Application for parental responsibilities and parental rights order by intended parents or surrogate (Scotland)

- (1) Section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.) is amended as follows.
- (2) In subsection (3), after paragraph (ab) insert –
 - “(ac) that application for a contact order is made with the leave of the court, in respect of a child born as a result of an assisted reproduction procedure carried out under a surrogacy agreement by –
 - (i) the surrogate under the agreement, or
 - (ii) an intended parent under the agreement;”.
- (3) In subsection (4)(c), for the words from “section 55(1)” to the end substitute “any provision, other than section 34(2), 34(5)(b) or 35(4)(c), of the Surrogacy Act 2023 or any provision made under that Act;”.

(4) After subsection (6) insert—

“(6A) An application for an order under subsection (1) may not be made in respect of a child mentioned in subsection (3)(ac), other than as mentioned in that subsection, by an intended parent of the child under the surrogacy agreement if—

- (a) the intended parent was a legal parent of the child by virtue of section 4 of the Surrogacy Act 2023 but is no longer the child’s legal parent,
- (b) the intended parent is not, and never has been, a legal parent of the child by virtue of that section and either—
 - (i) an application made for an order in relation to the child under section 15 or 17 of that Act (application for order that intended parent is parent of child) has been withdrawn or finally determined, within the meaning of section 34(7) of that Act, with no such order having been made, or
 - (ii) the period of 6 months beginning with the day of the child’s birth has ended and no application for an order under either of those sections has been made.

(6B) An application for an order under subsection (1) may not be made in respect of a child mentioned in subsection (3)(ac), other than as mentioned in that subsection, by the surrogate under the surrogacy agreement if—

- (a) the surrogate’s parental responsibilities and parental rights in respect of the child were extinguished by virtue of section 34(5)(b) of that Act, and
- (b) an application for an order in relation to the child under section 21 of that Act (application by surrogate for order that surrogate is parent of child) has been finally determined, within the meaning of section 34(7) of that Act, with no such order having been made.

(6C) In subsections (3)(ac), (6A) and (6B) “assisted reproduction procedure”, “intended parent”, “surrogacy agreement” and “surrogate” have the meanings given by section 2 of the Surrogacy Act 2023.”

PART 3

PAYMENTS IN RELATION TO SURROGACY

39 Payments in relation to surrogacy: general prohibition and exceptions

- (1) This section applies where a surrogacy agreement has been entered into.
- (2) During the protected period, the making of a payment by the intended parent, or by either or both of the intended parents, to the surrogate is prohibited unless it is—

- (a) a payment in respect of mandatory costs,
- (b) a payment in respect of permitted costs (see section 40), or
- (c) a permitted discretionary payment (see section 42).

Paragraph (b) is subject to section 41.

- (3) In this section, “the protected period” means the period beginning when the surrogacy agreement is entered into and ending –
 - (a) if the surrogate gives birth to a relevant child, at the end of the period of 6 weeks beginning with the day of the birth,
 - (b) if the surrogacy agreement expires without a relevant child having been born, on the expiry of the agreement, or
 - (c) if, without a relevant child having been born, the surrogate or any intended parent gives notice to the other individuals who are party to the agreement that they withdraw from the agreement, on the giving of the notice.
- (4) In this Part “relevant child”, in relation to a surrogacy agreement, means a child carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement.
- (5) References in subsection (3) to the birth of a child are to the birth of a child born alive.

40 Permitted costs

- (1) “Permitted costs” are costs of a description prescribed in regulations made by the Secretary of State.
- (2) In exercising the power under subsection (1), the Secretary of State must have regard to the principle that the surrogate should be neither better nor worse off financially as a result of the surrogacy agreement.
- (3) Regulations under subsection (1) may, among other things, make provision to the effect that the following are permitted costs –
 - (a) the costs of travel and subsistence (including accommodation) incurred in connection with –
 - (i) the surrogate meeting with the intended parent or parents;
 - (ii) the surrogate attending medical appointments in connection with surrogacy matters;
 - (b) the costs of medical care incurred in connection with surrogacy matters;
 - (c) any other costs incurred with a view to ensuring the surrogate’s physical, mental and emotional well-being in connection with surrogacy matters including, for example, the costs of counselling, physiotherapy, antenatal classes and fitness classes;
 - (d) the costs of pregnancy-related items for use by the surrogate including, for example, maternity clothes;
 - (e) any increase in food costs that are attributable to the surrogate carrying a relevant child or otherwise to her entering the surrogacy agreement;

- (f) any costs incurred in securing assistance with the performance of any day-to-day household task –
 - (i) that would normally be performed by the surrogate, but
 - (ii) that she is unable to perform as a result of carrying, or giving birth to, a relevant child;
 - (g) the costs of compensating for loss of earnings suffered as a result of the surrogate entering into the surrogacy agreement.
- (4) For the purposes of subsection (3) the following are “surrogacy matters” –
- (a) the surrogate undergoing an assisted reproduction procedure carried out under the surrogacy agreement;
 - (b) the surrogate carrying, or giving birth to, a relevant child.
- (5) Regulations under subsection (1) may provide that costs of a particular description are permitted costs only if they are incurred before the end of the period prescribed in the regulations (the “payment period”).

41 Regulated surrogacy agreements: permitted costs limited by regulated surrogacy statement

- (1) Subsection (3) applies where –
- (a) a regulated surrogacy statement has been completed in relation to a surrogacy agreement,
 - (b) neither the surrogate nor the intended parent, or none of the surrogate and the intended parents have withdrawn their consent to section 4(1) applying in relation to the agreement, and
 - (c) the relevant regulated surrogacy organisation has not withdrawn its approval to the agreement being one to which section 4(1) applies.
- But see subsection (2).
- (2) For the purposes of subsection (1) –
- (a) the following are effective only if they occur before the surrogate undergoes the first assisted reproduction procedure carried out under the surrogacy agreement after completion of the statement –
 - (i) withdrawal by an intended parent of their consent to section 4(1) applying in relation to the agreement;
 - (ii) withdrawal by the relevant surrogacy organisation of its approval to the agreement being one to which section 4(1) applies, and
 - (b) the withdrawal by the surrogate of her consent to section 4(1) applying in relation to the agreement is effective only if it occurs at a time when no relevant child has been born.
- (3) The making of a payment by the intended parent, or by either or both of the intended parents, to the surrogate in respect of permitted costs is prohibited unless the permitted costs in question –
- (a) are of a description specified in the statement for the purposes of this section,

- (b) do not exceed the agreed limit, and
 - (c) are incurred before the end of the reduced payment period (if any).
- (4) Permitted costs of a particular description do not “exceed the agreed limit” if, when taken together with any other permitted costs of the same description in respect of which any payment has been made by the intended parent or by either or both of the intended parents to the surrogate, they do not exceed the amount (if any) specified in the regulated surrogacy statement as the maximum amount of costs of that description that may be recovered by the surrogate pursuant to the statement.
- (5) The “reduced payment period”, in relation to permitted costs of a particular description, means the period (if any) specified in the regulated surrogacy statement in relation to permitted costs of that description; and such a period may only be specified if it ends before the end of the payment period.
- (6) The prohibition under subsection (3) ceases to apply at the end of the protected period (within the meaning given by section 39(3)).

42 Permitted discretionary payments

- (1) A payment is a “permitted discretionary payment” if—
- (a) it is a payment of a description prescribed in regulations made by the Secretary of State,
 - (b) in a case within section 41(1), the intended parent or either or both of the intended parents have given notice to the relevant regulated surrogacy organisation that they intend to make the payment, and
 - (c) it is made in accordance with any other requirements prescribed in the regulations (including any requirements prescribed in relation to the giving of notice for the purposes of paragraph (b)).
- (2) Regulations under subsection (1)(a) may, among other things, make provision to the effect that payments in respect of the following are capable of being permitted discretionary payments—
- (a) a modest gift given to the surrogate;
 - (b) a holiday to be taken by the surrogate and her family (including one to be taken abroad) after the surrogate has given birth to a relevant child.
- (3) Regulations made by virtue of subsection (2)(b) must provide that, in a case within section 41(1), payments in respect of such a holiday are capable of being permitted discretionary payments only if the regulated surrogacy statement specifies that such payments may be made.
- (4) In subsection (2) “family” has the meaning prescribed in the regulations.

43 Variation of regulated surrogacy statement in relation to payments

- (1) The surrogate and the intended parent or parents may agree to vary the regulated surrogacy statement after its completion so as to—

- (a) add a description of permitted costs to any specified in the statement for the purposes of section 41;
 - (b) increase the amount specified in the statement in relation to a particular description of permitted costs as the maximum amount of such costs that may be recovered pursuant to the statement;
 - (c) lengthen the reduced payment period in relation to a particular description of permitted costs.
- (2) If regulations containing provision by virtue of section 42(2)(b) have been made, the surrogate and the intended parent or parents may also agree to vary the regulated surrogacy statement after its completion so as to specify that payments in respect of a holiday of the kind mentioned in section 42(2)(b) may be made.
- (3) No variation may be made under this section before the end of the period of 6 weeks beginning with the day of the birth of a relevant child unless the relevant regulated surrogacy organisation consents to the variation.
- (4) A payment that was, at the time it was made, prohibited by virtue of section 39 or 41 ceases to be prohibited if, as a result of a variation made with the consent of the regulated surrogacy organisation as mentioned in subsection (3), it would not have been prohibited if it had been made after the variation.
- (5) The reference in subsection (3) to the birth of a relevant child is to the birth of a relevant child born alive.

44 Regulated surrogacy agreements: recovery of costs by surrogate

- (1) This section applies to a case within section 41(1) in which the surrogate has incurred any mandatory costs or permitted costs.
- (2) The mandatory costs incurred are recoverable summarily (or, in Scotland, recoverable) by the surrogate as a civil debt due to her from the intended parent or from either or both of the intended parents.
- (3) The permitted costs incurred are recoverable summarily (or, in Scotland, recoverable) by the surrogate as a civil debt due to her from the intended parent or from either or both of the intended parents, but only to the extent that the costs—
 - (a) are of a description specified in the regulated surrogacy statement for the purposes of section 41,
 - (b) do not exceed the agreed limit, and
 - (c) were incurred before the end of the reduced payment period (if any).
- (4) Subsections (2) and (3) apply whether or not—
 - (a) the surrogate gives birth to a relevant child;
 - (b) any relevant child is by virtue of section 4(1) the child of the intended parent or parents.

45 Other surrogacy agreements: recovery of costs by surrogate

- (1) This section applies where –
 - (a) a surrogacy agreement has been entered into,
 - (b) the case is not within section 41(1), and
 - (c) the surrogate has incurred any mandatory costs or permitted costs.
- (2) The court may, on an application made by the surrogate, make an order providing an amount representing so much of the mandatory costs and permitted costs as the court decides is appropriate to be recoverable summarily (or, in Scotland, recoverable) by the surrogate as a civil debt due to her from the intended parent or from either or both of the intended parents.
- (3) In deciding what amount is appropriate for the purposes of subsection (2), the court must take the surrogate’s usual standard of living into account.
- (4) In this section, “the court” –
 - (a) in relation to England and Wales, means the High Court or the family court;
 - (b) in relation to Scotland, means the Court of Session or a sheriff.

46 Regulated surrogacy agreements: recovery of overpayments by intended parent or parents

- (1) This section applies to a case within section 41(1) in which an overpayment has been made to the surrogate.
- (2) The value of the overpayment is recoverable by the intended parent or by either or both of the intended parents as a civil debt due from the surrogate.
- (3) For the purposes of this section, an overpayment is made to the surrogate if –
 - (a) the intended parent or either or both of the intended parents have made payments to her in respect of mandatory costs or permitted costs, and
 - (b) the aggregate amount of those payments is more than the aggregate amount of any payments made by the surrogate in respect of surrogacy-related costs.
- (4) “Surrogacy-related costs” are –
 - (a) any mandatory costs incurred by the surrogate, and
 - (b) any permitted costs incurred by her that –
 - (i) are of a description specified in the regulated surrogacy statement for the purposes of section 41,
 - (ii) do not exceed the agreed limit, and
 - (iii) were incurred before the end of the reduced payment period (if any).
- (5) The “value of the overpayment” is the difference between the two aggregate amounts mentioned in subsection (3)(b).

- (6) Section 50(3) does not apply to this section.

47 Other surrogacy agreements: recovery of overpayments by intended parent or parents

- (1) This section applies where—
- (a) a surrogacy agreement has been entered into,
 - (b) the case is not within section 41(1), and
 - (c) an overpayment has been made to the surrogate.
- (2) The value of the overpayment is recoverable by the intended parent or by either or both of the intended parents as a civil debt due from the surrogate.
- (3) For the purposes of this section, an overpayment is made to the surrogate if—
- (a) the intended parent or either or both of the intended parents have made payments to the surrogate in respect of mandatory costs or permitted costs, and
 - (b) the aggregate amount of those payments is more than the aggregate amount of any payments made by the surrogate in respect of any mandatory or permitted costs incurred by her.
- (4) The “value of the overpayment” is the difference between the two aggregate amounts mentioned in subsection (3)(b).
- (5) Section 50(3) does not apply to this section.

48 Regulated surrogacy agreements: statutory declarations as to payments made

- (1) This section applies where a child is born who has a parent or parents by virtue of section 4(1).
- (2) Each parent of the child must, before the end of the period of 12 weeks beginning with the day of the child’s birth—
- (a) make a statutory declaration that the parent—
 - (i) has not made any payment to the surrogate that was prohibited by section 39 or 41, or
 - (ii) has made such payments, and
 - (b) give the declaration to the relevant regulated surrogacy organisation.
- This is subject to subsection (4).
- (3) Where a parent makes a statutory declaration under subsection (2)(a)(ii), the declaration must include—
- (a) the amount of any such payment, and
 - (b) such other information about the payment as the Secretary of State may specify in regulations.
- (4) Subsection (2) does not apply if, immediately before the end of the 12-week period concerned, the body of persons that formed the relevant regulated surrogacy organisation no longer exists.

- (5) A person who without reasonable excuse contravenes subsection (2) commits an offence.
- (6) A person guilty of an offence under subsection (5) is liable—
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland, to a fine not exceeding level 5 on the standard scale.

49 Enforcement of prohibition on payments: financial penalties

- (1) The Secretary of State may by regulations make provision for the imposition of a financial penalty on a person who has contravened a prohibition imposed by section 39 or 41.
- (2) The regulations may among other things—
 - (a) specify the person that is to have the function of imposing a financial penalty;
 - (b) set out the procedure to be followed in imposing a penalty;
 - (c) make provision about the amount of a penalty;
 - (d) make provision about the enforcement of a penalty;
 - (e) provide for a right of appeal against the imposition of a penalty;
 - (f) provide for exemptions from a penalty;
 - (g) provide for the issuing of guidance by the Secretary of State in relation to the imposition of penalties and specify persons who must have regard to the guidance;
 - (h) provide for the payment of a penalty into the Consolidated Fund.

50 Interpretation of Part 3

- (1) In this Part—
 - “payment” includes payment in money’s worth;
 - “payment period” has the meaning given by section 40(5);
 - “permitted costs” has the meaning given by section 40(1);
 - “permitted discretionary payment” has the meaning given by section 42(1);
 - “reduced payment period” has the meaning given by section 41(5);
 - “relevant child” has the meaning given by section 39(4);
 - “relevant regulated surrogacy organisation”, in relation to a surrogacy agreement, means the body of persons who made the statement mentioned in section 5(3).
- (2) For the purposes of this Part, a reference to permitted costs not exceeding the agreed limit is to be read in accordance with section 41(4).
- (3) In this Part, subject to express provision to the contrary—

- (a) references to a person making a payment to another person include references to the person agreeing, or promising, to make a payment to the other person;
- (b) references to a payment being made by an intended parent or parents include references to a payment being made by another person on behalf of an intended parent or parents;
- (c) references to a payment being made to the surrogate include references to a payment being made to another person on behalf of the surrogate.

PART 4

REGULATION OF SURROGACY-RELATED ACTIVITY

CHAPTER 1

LICENSING REGIME

Licensable activity

51 Meaning of “licensable surrogacy-related activity” and other terms

- (1) In this Chapter “licensable surrogacy-related activity” means—
 - (a) advertising which relates to a surrogacy agreement,
 - (b) anything done with a view to assisting an individual who wants to enter into a surrogacy agreement to find another individual or individuals with whom to enter into the agreement,
 - (c) completing a regulated surrogacy statement or anything done in connection with the completion of a regulated surrogacy statement, or
 - (d) advising in relation to, or monitoring, payments in connection with a surrogacy agreement in relation to which a regulated surrogacy statement has been completed.
- (2) In this Chapter—
 - “directions” means directions under section 65;
 - “licence” means a licence under section 52;
 - “licence holder” means a body of persons holding a licence;
 - “person responsible” has the meaning given in section 52(3)(a);
 - “person to whom a licence applies” has the meaning given in section 54(2).

Grant of licences

52 Grant of licences

- (1) Subject to the following provisions of this Chapter, the HFEA may on application grant a licence to a body of persons in relation to the carrying on of licensable surrogacy-related activity.
- (2) The HFEA may grant a licence only if the requirements in subsection (3) are met.
- (3) The requirements are that—
 - (a) the application is for a licence designating an individual as the person under whose supervision the licensable surrogacy-related activity is to be carried on (referred to in this Chapter as “the person responsible”),
 - (b) the HFEA is satisfied that the character of the individual is such as is required for the supervision of the activity,
 - (c) the HFEA is satisfied that the individual will discharge the duty under section 54,
 - (d) the individual consents to the making of the application,
 - (e) the applicant is a non-profit-making body, and
 - (f) the HFEA is satisfied that the applicant is a suitable body of persons to hold a licence.
- (4) A licence may be granted for such period not exceeding 5 years as may be specified in the licence.
- (5) The grant of a licence to a body may be by way of renewal of a licence granted to the body, whether subject to the same or different conditions.
- (6) Subsection (7) applies where the HFEA is of the opinion that the information provided in the application is insufficient to enable it to determine the application.
- (7) The HFEA—
 - (a) may require the applicant to provide such further information as the HFEA considers it requires to determine the application, and
 - (b) need not consider the application until it has received that information.
- (8) The HFEA may not grant a licence unless a copy of the conditions of the proposed licence has been shown to, and acknowledged in writing by—
 - (a) an individual acting on behalf of the applicant, and
 - (b) the person responsible.

53 Licence conditions

- (1) A licence is granted subject to the following conditions—
 - (a) that licensable surrogacy-related activity is carried on only under the supervision of the person responsible,

- (b) that specified information is recorded about—
 - (i) any child appearing to the person responsible to have been born as a result of an assisted reproduction procedure carried out under a surrogacy agreement in relation to which a regulated surrogacy statement was signed on behalf of the licence holder,
 - (ii) the surrogate who carried such a child,
 - (iii) the intended parent or parents in relation to such a child,
 - (iv) any other individual whose gametes were used to bring about the creation of the embryo from which such a child developed, and
 - (v) a person involved in organising or carrying out any assisted reproduction procedure as a result of which such a child was born,
 - (c) that proper records are maintained in the specified form and for the specified period,
 - (d) that the following is included in the records—
 - (i) any information recorded in pursuance of paragraph (b),
 - (ii) a copy of any regulated surrogacy statement that is signed on behalf of the licence holder and a copy of any changes that are made to such a statement after its completion,
 - (iii) a copy of any notice of withdrawal of consent given to the licence holder for the purposes of section 9(1)(b),
 - (iv) a copy of any notice of the surrogate’s decision given to the licence holder for the purposes of section 21(5)(b)(ii),
 - (v) a copy of any statutory declaration given to the licence holder for the purposes of section 48(2)(b), and
 - (vi) any other specified information, and
 - (e) that the HFEA is provided, in the specified form and at the specified intervals, with—
 - (i) specified copies of, or extracts from, the records, and
 - (ii) any other specified information.
- (2) The HFEA may grant a licence subject to such additional conditions as the HFEA may specify in the licence.
- (3) In subsection (1) “specified” means specified in directions.

Persons to whom a licence applies

54 The person responsible and other persons to whom a licence applies

- (1) The person responsible must—
 - (a) secure that the licence holder is properly managed and complies with any legal obligations to which it is subject,
 - (b) secure that the conditions of the licence are complied with,

- (c) undertake, and secure that the other persons to whom the licence applies undertake, such training as is appropriate for a person to be qualified as a suitable person to participate in licensable surrogacy-related activity, and
 - (d) respond promptly to requests for information or documents from the HFEA.
- (2) References in this Chapter to a “person to whom a licence applies” are to—
- (a) the person responsible,
 - (b) any person designated in the licence, or in a notice given to the HFEA by the licence holder or the person responsible, as a person to whom the licence applies, or
 - (c) any person acting under the direction of the person responsible or of any person so designated.

Revocations, variations and suspensions of licences

55 Revocation of licences

- (1) The HFEA must revoke a licence if the licence holder ceases to be a non-profit-making body.
- (2) The HFEA may revoke a licence on application by—
 - (a) the person responsible, or
 - (b) the licence holder.
- (3) The HFEA may revoke a licence without an application under subsection (2) if—
 - (a) the HFEA is satisfied that any information given for the purposes of the application for the licence was in any material respect false or misleading,
 - (b) the HFEA is satisfied that the person responsible has failed to discharge, or is unable because of incapacity to discharge, the duty under section 54,
 - (c) the HFEA is satisfied that the person responsible has failed to comply with directions in connection with the licence,
 - (d) the HFEA ceases to be satisfied that the person responsible is a suitable individual to supervise licensable surrogacy-related activity,
 - (e) the person responsible dies,
 - (f) the person responsible is convicted of an offence under this Part,
 - (g) the HFEA ceases to be satisfied that the licence holder is a suitable body of persons to hold the licence, or
 - (h) the HFEA is satisfied that there has been any other material change of circumstances since the licence was granted.

56 Variation of licences

- (1) The HFEA may vary a licence on application by –
 - (a) the person responsible, or
 - (b) the licence holder.
- (2) The HFEA may vary a licence without an application under subsection (1) if it has the power to revoke the licence under section 55(3).
- (3) The HFEA may on application by the licence holder vary the licence so as to substitute another individual for the person responsible if –
 - (a) the application is made with the consent of that other individual, and
 - (b) the HFEA is satisfied that –
 - (i) the character of the other individual is such as is required for the supervision of licensable surrogacy-related activity, and
 - (ii) the individual will discharge the duty under section 54.
- (4) The powers to vary a licence under subsections (1) and (2) do not extend to making the kind of variation mentioned in subsection (3).
- (5) The HFEA may vary a licence without an application under subsection (1) by –
 - (a) removing or varying a condition of the licence, or
 - (b) adding a condition to the licence.
- (6) The powers conferred by this section do not extend to the conditions required by section 53(1).

57 Power to suspend a licence

- (1) Where the HFEA –
 - (a) has reasonable grounds to suspect that there are grounds for revoking a licence, and
 - (b) is of the opinion that the licence should immediately be suspended, it may by notice suspend the licence for the period, which must not exceed 3 months, specified in the notice.
- (2) The HFEA may continue a suspension under subsection (1) by giving a further notice under that subsection.
- (3) Notice under subsection (1) must be given –
 - (a) to the person responsible, or
 - (b) where the person responsible has died or appears because of incapacity to be unable to discharge the duty under section 54, to –
 - (i) the licence holder, or
 - (ii) some other person to whom the licence applies.
- (4) Subject to subsection (5), a licence is of no effect while a notice under subsection (1) is in force.

- (5) An application may be made under section 55(2) or 56(1) or (3) even though a notice under subsection (1) is in force.

Procedure in relation to applications and licensing decisions

58 Procedure for applications in relation to licences

- (1) Directions may make provision about—
- (a) the form and content of applications, and
 - (b) the information to be supplied with an application.
- (2) The Secretary of State may by regulations make other provision about applications.
- (3) Regulations under subsection (2) may, among other things, make provision about procedure in relation to the determination of applications and may, for example, include—
- (a) provision for requiring persons to give evidence or to produce documents;
 - (b) provision about the admissibility of evidence.
- (4) In this section “applications” means applications under this Chapter.

59 Procedure in relation to licensing decisions

- (1) Before making a decision—
- (a) to refuse an application for the grant, revocation or variation of a licence, or
 - (b) to grant an application for a licence subject to a condition imposed under section 53(2),
- the HFEA must give the applicant notice of the proposed decision and of the reasons for it.
- (2) Before making a decision under section 55(3) or 56(2) or (5) in relation to a licence the HFEA must give notice of the proposed decision and of the reasons for it to—
- (a) the person responsible, and
 - (b) the licence holder.
- (3) Where an application has been made under section 56(1) to vary a licence, but the HFEA considers it appropriate to vary the licence otherwise than in accordance with the application, before so varying the licence the HFEA must give notice of its proposed decision and of the reasons for it to—
- (a) the person responsible, and
 - (b) the licence holder.
- (4) A person to whom notice is given under subsection (1), (2) or (3) may by notice require the HFEA to give the person an opportunity to make representations about the proposed decision in the form of—

- (a) oral representations made by the person or another person acting on the person's behalf, or
 - (b) written representations made by the person.
- (5) A notice given to the HFEA under subsection (4) must be given before the end of the period of 28 days beginning with the day on which the notice under subsection (1), (2) or (3) was given.
- (6) The HFEA may by regulations make such additional provision about procedure in relation to the carrying out of functions under sections 55 and 56 and this section as it thinks fit.

60 Notification of licensing decisions

- (1) In the case of a decision to grant a licence, the HFEA must give notice of the decision to—
- (a) the applicant, and
 - (b) the individual who is to be the person responsible.
- (2) In the case of a decision to revoke a licence, the HFEA must give notice of the decision to—
- (a) the person responsible, and
 - (b) the licence holder.
- (3) In the case of a decision to vary a licence on application under section 56(3), the HFEA must give notice of the decision to—
- (a) the individual who is to be the person responsible, and
 - (b) the licence holder.
- (4) In the case of any other decision to vary a licence, the HFEA must give notice of the decision to—
- (a) the person responsible, and
 - (b) the licence holder.
- (5) In the case of a decision to refuse an application for the grant, revocation or variation of a licence, the HFEA must give notice of the decision to the applicant.
- (6) Subject to subsection (7), a notice under subsection (2), (4) or (5) must include a statement of the reasons for the decision.
- (7) In the case of a notice under subsection (2) or (4), the notice is not required to include a statement of the reasons for the decision if the decision is made on an application under section 55(2) or 56(1).

61 Right to reconsideration of licensing decisions

- (1) If an application for the grant, revocation or variation of a licence is refused, the applicant may by notice require the HFEA to reconsider the decision.

- (2) Where the HFEA decides to vary or revoke a licence, any person to whom notice of the decision was required to be given (other than a person who applied for the variation or revocation) may by notice require the HFEA to reconsider the decision.
- (3) A notice given to the HFEA under subsection (1) or (2) must be given before the end of the period of 28 days beginning with the day on which notice of the decision concerned was given under section 60.
- (4) If the HFEA decides –
 - (a) to suspend a licence under section 57(1), or
 - (b) to continue the suspension of a licence under section 57(2),the person mentioned in subsection (5) may by notice require the HFEA to reconsider the decision.
- (5) The person mentioned in this subsection is –
 - (a) if notice of the decision under section 57 was given to the person responsible, the person responsible;
 - (b) in any other case, the licence holder or any other person to whom the licence applies.
- (6) A notice given to the HFEA under subsection (4) must be given before the end of the period of 14 days beginning with the day on which notice of the decision concerned was given under section 57.
- (7) The giving of a notice to the HFEA in accordance with subsection (6) does not affect the continuation in force of the suspension of the licence in respect of which the notice was given.
- (8) Subsections (1), (2) and (4) do not apply to a decision on reconsideration.

62 Appeals committee

- (1) The HFEA must maintain one or more committees (“an appeals committee”) to carry out its functions of reconsideration.
- (2) The Secretary of State may by regulations make provision about the membership and proceedings of appeals committees.
- (3) Regulations under subsection (2) may, among other things, provide –
 - (a) for the membership of an appeals committee to be made up wholly or partly of persons who are not members of the HFEA, and
 - (b) for the appointment of any person to advise an appeals committee on matters specified by regulations under subsection (2).
- (4) In this section and section 63 “reconsideration” means reconsideration as required by a notice under section 61.

63 Procedure on reconsideration

- (1) Reconsideration is to be by way of a fresh decision.

- (2) The Secretary of State may make regulations about the procedure in relation to reconsideration.
- (3) Regulations under subsection (2) may, among other things, make provision—
 - (a) entitling a person by whom reconsideration is required (“the appellant”), to require that the appellant or the appellant’s representative be given an opportunity to appear before and be heard by the appeals committee dealing with the matter,
 - (b) entitling the person who made the decision on behalf of the HFEA which is the subject of reconsideration (“the decision-maker”) to appear at any meeting at which such an opportunity is given, and to be heard in person or by a representative,
 - (c) requiring the appeals committee dealing with the matter to consider any written representations received from the appellant or the decision-maker,
 - (d) preventing the decision-maker from sitting as a member of the appeals committee dealing with the matter,
 - (e) requiring persons to give evidence or to produce documents,
 - (f) concerning the admissibility of evidence, and
 - (g) requiring the appellant and any person specified by the regulations to be given notice of the decision on reconsideration and a statement of reasons for the appeals committee’s decision.
- (4) Regulations under subsection (2) may make different provision about the procedure on reconsideration depending upon whether the reconsideration is required by a notice under section 61(3) or a notice under section 61(6).
- (5) Such regulations may, among other things, make provision—
 - (a) in relation to cases where a person requires reconsideration of a decision to suspend a licence and reconsideration of a decision to continue the suspension of that licence, and
 - (b) in relation to cases where reconsideration of a decision is required under section 61(2) by only one of two persons by whom it could have been required.

64 Appeal on a point of law

A person aggrieved by a decision on reconsideration required by a notice under section 61 may appeal on a point of law—

- (a) in relation to England and Wales, to the High Court;
- (b) in relation to Scotland, to the Court of Session.

Directions and code of practice

65 Directions: general

- (1) The HFEA may from time to time give directions—

- (a) for any purpose for which directions may be given under this Chapter, or
 - (b) varying or revoking any such directions previously given.
- (2) A person to whom any requirement contained in directions is applicable must comply with the requirement.
- (3) Anything done by a person under directions is to be treated for the purposes of this Part as done under, and in accordance with, a licence.
- (4) Where directions are to be given to a particular person, the directions are to be given by serving notice of the directions on the person.
- (5) In any other case, directions may be given—
- (a) in respect of any licence (including a licence which has ceased to have effect), by serving notice of the directions on the person—
 - (i) who is, or was, the person responsible, or
 - (ii) who is, or was, the licence holder;
 - (b) if the directions appear to the HFEA to be general directions, or it appears to the HFEA that it is not practicable to give notice as mentioned in paragraph (a), by publishing the directions in such way as, in the opinion of the HFEA, is likely to bring the directions to the attention of the persons to whom they are applicable.

66 Directions as to particular matters

- (1) Directions must require information to be recorded about—
- (a) any child such as is mentioned in section 53(1)(b)(i),
 - (b) any person such as is mentioned in section 53(1)(b)(ii) to (iv), and
 - (c) any person falling within section 53(1)(b)(v) who is of a description specified in the directions.
- (2) Directions must require that copies of the records relating to the matters mentioned in section 53(1)(d)(i) to (v) are given to the HFEA.
- (3) Directions may make provision for the purpose of dealing with a situation arising in consequence of—
- (a) the variation of a licence, or
 - (b) a licence ceasing to have effect.
- (4) Directions under subsection (3)(a) may impose requirements—
- (a) on the licence holder,
 - (b) on the person who is the person responsible immediately before or immediately after the variation, or
 - (c) on any other person, if that person consents.
- (5) Directions under subsection (3)(b) may impose requirements—
- (a) on the person who holds the licence immediately before the licence ceases to have effect,

- (b) on the person who is the person responsible at that time, or
 - (c) on any other person, if that person consents.
- (6) Directions under subsection (3) may, in particular, require anything kept, or information held, in pursuance of the licence to be transferred in accordance with the directions.

67 Code of practice

- (1) The HFEA must maintain a code of practice in relation to—
 - (a) the proper conduct of licensable surrogacy-related activity, and
 - (b) the proper discharge of the functions of—
 - (i) the person responsible, and
 - (ii) other persons to whom a licence applies.
- (2) The code must include provision about—
 - (a) the carrying out of the pre-approval checks for the purposes of section 5(3)(a),
 - (b) the account to be taken of the welfare of children who may be born as a result of a surrogacy agreement (including a child’s need for supportive parenting), and of other children who may be affected by such births, and
 - (c) the sharing of information.
- (3) The HFEA may from time to time revise the whole or any part of the code.
- (4) The HFEA must publish on its website the code as for the time being in force.
- (5) Failure on the part of a person to observe any provision of the code does not of itself render the person liable to any proceedings, but—
 - (a) the HFEA must, 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 HFEA may, in considering whether or not to vary or revoke a licence, take into account any observance of or failure to observe the provisions of the code.

68 Procedure for approval of code

- (1) The HFEA must send a draft of the proposed first code of practice under section 67 to the Secretary of State.
- (2) If the Secretary of State approves the draft, the Secretary of State must lay a copy of the draft before Parliament.
- (3) If the Secretary of State does not approve the draft—
 - (a) the Secretary of State must give reasons to the HFEA, and
 - (b) the HFEA must send a further draft to the Secretary of State.

- (4) Subsections (2) and (3) apply in relation to a further draft of the proposed first code as they apply in relation to a draft sent under subsection (1).
- (5) Before preparing any draft, the HFEA must consult—
 - (a) such persons as the Secretary of State may require it to consult, and
 - (b) such other persons (if any) as the HFEA considers appropriate.
- (6) If the HFEA proposes to revise the code—
 - (a) the HFEA must send a draft of the proposed revised code to the Secretary of State, and
 - (b) subsections (2), (3)(a) and (5) apply in relation to the draft of the proposed revised code as they apply in relation to the draft of the proposed first code.
- (7) A draft of the code approved by the Secretary of State comes into force in accordance with directions.

Register of licences

69 The HFEA’s register of licences

- (1) The HFEA must keep a register recording the grant, suspension or revocation of every licence.
- (2) The register must specify, in relation to each licence—
 - (a) the name of the person responsible,
 - (b) the name of the licence holder,
 - (c) the conditions subject to which the licence is granted, and
 - (d) any variations made.
- (3) The HFEA must make such of the information included in the register as it considers appropriate available to the public in such manner as it considers appropriate.

Fees

70 Fees

- (1) The HFEA may charge a fee in respect of any of the following—
 - (a) an application for a licence,
 - (b) the grant or renewal of a licence,
 - (c) an application for the revocation or variation of a licence, or
 - (d) the exercise by the HFEA of any other function conferred on it by or under this Chapter or by or under any other enactment in relation to a licence.
- (2) The amount of any fee charged by virtue of subsection (1) is to be fixed in accordance with a scheme made by the HFEA with the approval of the Secretary of State.

Offences and enforcement

71 Offences

- (1) A person commits an offence if, for the purposes of the grant of a licence –
 - (a) the person provides any information which is false or misleading in a material particular, and
 - (b) the person knows that, or is reckless as to whether, the information is false or misleading in a material particular.
- (2) A person commits an offence if the person fails to comply with any directions given by virtue of section 66(6).
- (3) A person guilty of an offence under subsection (1) or (2) is liable –
 - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine, or to both;
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or to both;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or to both.
- (4) It is a defence for a person charged with an offence under subsection (2) to prove that the person took all such steps as were reasonable and exercised all due diligence to avoid committing the offence.

72 Powers of inspection, entry, search and seizure

Schedule 3 makes provision about powers of inspection, entry, search and seizure.

Notices

73 Notices

Section 46 of the Human Fertilisation and Embryology Act 1990 (notices) applies in relation to any notice required or authorised to be given or served by this Chapter as it applies in relation to any notice required or authorised to be given or served by that Act.

Consequential amendments

74 Consequential amendments

Schedule 4 contains amendments of the Human Fertilisation and Embryology Act 1990 consequential on this Chapter.

CHAPTER 2

OFFENCES

Matching services

75 Offences relating to matching services

- (1) It is an offence for a person to provide surrogacy matching services.
- (2) Subsection (1) does not apply to surrogacy matching services provided by—
 - (a) a non-profit-making body, or
 - (b) an individual who is acting otherwise than in the course of business.
- (3) It is an offence for a person—
 - (a) to provide surrogacy matching services in return for a payment, or
 - (b) to charge for the provision of surrogacy matching services.
- (4) Subsection (3) does not apply to surrogacy matching services provided under, and in accordance with, a licence.
- (5) In proceedings for an offence under subsection (3)(a), it is a defence to show that at the time of providing the services the defendant (or, in Scotland, the accused) did not know that a requirement to pay for the services was being imposed.
- (6) A person is taken to have shown the matter mentioned in subsection (5) if—
 - (a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and
 - (b) the contrary is not proved beyond reasonable doubt.
- (7) A person does not commit an offence merely by making use of services which another person is prohibited by this section from providing.
- (8) In this section, “surrogacy matching services” means services provided with a view to assisting an individual who wants to enter into a surrogacy agreement to find another individual or individuals with whom to enter into the agreement.
- (9) A person guilty of an offence under this section is liable—
 - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 3 months or a fine, or to both;
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or to both.

*Legal advice***76 Offences relating to legal advice given in connection with a surrogacy agreement**

- (1) It is an offence for a person—
 - (a) to provide, in relation to a particular surrogacy agreement and in return for a payment, any of the services mentioned in subsection (2), or
 - (b) to charge, in relation to a particular surrogacy agreement, for the provision of such services.
- (2) The services are—
 - (a) negotiating, or assisting in the negotiation of, the terms of the agreement,
 - (b) drafting, or assisting with the drafting of, the terms of the agreement, or
 - (c) advising as to the legal effect of becoming, or being, a party to the agreement.
- (3) Subsection (1) does not apply to services provided by—
 - (a) a non-profit-making body,
 - (b) an individual who is acting otherwise than in the course of business,
 - (c) a legal professional, or
 - (d) a person specified, or of a description specified, in regulations made by the Secretary of State.
- (4) In proceedings for an offence under subsection (1)(a), it is a defence to show that at the time of providing the services the defendant (or, in Scotland, the accused) did not know that a requirement to pay for the services was being imposed.
- (5) A person is taken to have shown the matter mentioned in subsection (4) if—
 - (a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and
 - (b) the contrary is not proved beyond reasonable doubt.
- (6) A person does not commit an offence merely by making use of services which another person is prohibited by this section from providing.
- (7) In this section “legal professional” means—
 - (a) in relation to England and Wales—
 - (i) a practising barrister,
 - (ii) a person qualified to practise as a solicitor under section 1 of the Solicitors Act 1974, or
 - (iii) a person authorised by the Chartered Institute of Legal Executives to practise as a member of the profession of legal executives;
 - (b) in relation to Scotland—

- (i) a member of the Faculty of Advocates practising as such, or
 - (ii) a person qualified to practise as a solicitor under section 4 of the Solicitors (Scotland) Act 1980.
- (8) A person guilty of an offence under this section is liable –
- (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland, to a fine not exceeding level 5 on the standard scale.

Advertising

77 Prohibitions on advertising

- (1) A person must not make arrangements for an advertisement –
- (a) that states that an individual or individuals are looking for other individuals with whom to enter into a surrogacy agreement, or
 - (b) in which the person offers to provide surrogacy matching services.
- (2) Subsection (1) does not apply to arrangements made under, and in accordance with, a licence.
- (3) A person must not make arrangements for an advertisement in which the person offers to provide any of the following services –
- (a) negotiating, or assisting in the negotiation of, the terms of a particular surrogacy agreement,
 - (b) drafting, or assisting with the drafting of, the terms of a particular surrogacy agreement, or
 - (c) advising as to the legal effect of becoming, or being, a party to a particular surrogacy agreement.
- (4) Subsection (3) does not apply to arrangements made by –
- (a) a non-profit-making body,
 - (b) an individual who is acting otherwise than in the course of business, or
 - (c) a legal professional.
- (5) A person must not make arrangements for an advertisement in which the person offers to provide services which are advertised as being for an individual who is or may become a surrogate or an intended parent.
- (6) Subsection (5) does not apply –
- (a) to arrangements made –
 - (i) under, and in accordance with, a licence, or
 - (ii) by a legal professional, or
 - (b) where the services advertised are –
 - (i) the services mentioned in subsection (3), or
 - (ii) services in support of the physical or mental health or well-being of an individual.

-
- (7) The Secretary of State may by regulations amend subsection (6) so as to add a case to which subsection (5) does not apply.
 - (8) A person must not make arrangements for an advertisement indicating that a person is willing to remove a child from the United Kingdom to a country or territory outside the British Islands for the purpose of steps being taken under the law of that country or territory that are equivalent to applying for an order under section 15, 17 or 19.
 - (9) A person must not publish a prohibited advertisement.
 - (10) An advertisement is a “prohibited advertisement” if the person making arrangements for the advertisement is prohibited from doing so under subsection (1), (3), (5) or (8).
 - (11) For the purposes of this section –
 - (a) references to an advertisement in which a person offers to do something include references to an advertisement in which a person is described or presented as available or competent to do the thing;
 - (b) publishing an advertisement means publishing it to the public and includes doing so by electronic means;
 - (c) “the public” includes selected members of the public as well as the public generally or any section of the public.
 - (12) In this section –
 - “legal professional” has the same meaning as in section 76;
 - “surrogacy matching services” has the same meaning as in section 75.

78 Offences relating to advertising

- (1) A person who contravenes section 77(1), (3), (5), (8) or (9) commits an offence.
- (2) A person guilty of an offence under this section is liable –
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland, to a fine not exceeding level 5 on the standard scale.
- (3) In proceedings for an offence under subsection (1) in relation to a contravention of section 77(9), it is a defence to show that the defendant (or, in Scotland, the accused) –
 - (a) did not know that the advertisement was a prohibited advertisement, and
 - (b) had taken reasonable steps to establish whether or not the advertisement was a prohibited advertisement.
- (4) A person is taken to have shown a matter mentioned in subsection (3) if –
 - (a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and
 - (b) the contrary is not proved beyond reasonable doubt.

- (5) In this section “prohibited advertisement” has the meaning given by section 77(10).

General

79 Consent required for prosecution

No proceedings for an offence under this Chapter are to be brought in England and Wales except by or with the consent of the Director of Public Prosecutions.

80 Time limits for prosecution

- (1) In relation to an offence under this Chapter, the following provisions have effect as if any reference in them to 6 months were a reference to 2 years—
- (a) section 127(1) of the Magistrates’ Courts Act 1980 (time limit for certain offences), and
 - (b) section 136(1) of the Criminal Procedure (Scotland) Act 1995 (time limit for certain offences).

CHAPTER 3

GENERAL

Offending by an organisation

81 Individual culpability for offending by an organisation

- (1) Subsection (2) applies where—
- (a) an offence under this Part is committed by—
 - (i) a body corporate,
 - (ii) a partnership, or
 - (iii) an unincorporated association other than a partnership, and
 - (b) the commission of the offence involves the connivance or consent of—
 - (i) a relevant individual, or
 - (ii) an individual purporting to act in the capacity of a relevant individual.
- (2) The individual (as well as the body corporate, partnership or association) commits the offence.
- (3) In subsection (1) “relevant individual” means—
- (a) in relation to a body corporate (other than a limited liability partnership)—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;

- (b) in relation to a limited liability partnership, a member;
- (c) in relation to any other partnership, a partner;
- (d) in relation to an unincorporated association other than a partnership, a person who is concerned in the management or control of the association.

82 Offences by bodies corporate and unincorporated associations (England and Wales)

- (1) Proceedings for an offence alleged to have been committed under this Part by an unincorporated association are to be brought in the name of that association (and not in the name of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that association were a corporation.
- (2) A fine imposed on an unincorporated association on its conviction of an offence under this Part is to be paid out of the funds of that association.
- (3) If an unincorporated association is charged with an offence under this Part, section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980 apply as they apply in relation to a body corporate.
- (4) In any proceedings for an offence under section 75, 76 or 78, proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person—
 - (a) taking part in the management or control of a body of persons,
 - (b) taking part in the management or control of any of the activities of the body, or
 - (c) providing services as mentioned in section 75(1) or (3) or 76(1) on behalf of the body,is to be admissible as evidence of the activities of the body.

Interpretation of Part

83 Interpretation of Part 4

In this Part—

- “body of persons” means a body of persons corporate or unincorporate;
- “licence” has the meaning given in section 51(2);
- “non-profit-making body” means a body of persons whose activities are not carried on for profit.

PART 5

REGISTERS AND INFORMATION

Key terms used in Part 5

84 Part 1 surrogate-born individuals and Part 1 surrogate siblings

- (1) In this Part, “Part 1 surrogate-born individual” means an individual born as a result of an assisted reproduction procedure carried out under—
 - (a) a regulated surrogacy agreement,
 - (b) a surrogacy agreement that is not a regulated surrogacy agreement in a case where an application for an order under section 15, 17 or 19 was made in respect of the individual, or
 - (c) a surrogacy agreement that is not a regulated surrogacy agreement in a case where—
 - (i) the agreement was entered into on or after the day on which section 4 comes into force, and
 - (ii) the intended parent has died or, if there were two intended parents, both of them have died.
- (2) For the purposes of this Part, a surrogacy agreement is a “Part 1 surrogacy agreement” if it is an agreement under which an assisted reproduction procedure was carried out as a result of which a Part 1 surrogate-born individual was born.
- (3) For the purposes of this Part, individuals are Part 1 surrogate siblings of each other where—
 - (a) the same woman gave birth to both of them, and
 - (b) at least one of them is a Part 1 surrogate-born individual.

85 Children without capacity or competence

- (1) In this Part, subject to subsection (2), references to a child without capacity or competence in relation to a document or information, or the disclosure of information, are references to an individual who—
 - (a) is aged 16 or 17 and lacks capacity (within the meaning of the Mental Capacity Act 2005) in relation to the receipt of the document or information or (as appropriate) the disclosure of the information, or
 - (b) is aged under 16 and is not competent in relation to decisions about the receipt of the document or information or (as appropriate) the disclosure of the information.
- (2) An individual habitually resident in Scotland is a child without capacity or competence in relation to a document or information, or the disclosure of information, only if the individual—
 - (a) is aged under 16, and
 - (b) is not capable of understanding—

- (i) the nature of the document or information, and
 - (ii) the possible consequences of receiving the document or information or (as appropriate) the disclosure of the information.
- (3) Nothing in the Age of Legal Capacity (Scotland) Act 1991 prevents an individual aged under 16 who is habitually resident in Scotland from making a request for a document or information, or for the disclosure of information, under this Part.

86 Other key terms

- (1) In this Part “licence” means a licence under section 52.
- (2) In this Part—
 - (a) references to an assisted reproduction procedure include a procedure carried out outside the United Kingdom;
 - (b) references to a person to whom a licence applies have the same meaning as in Chapter 1 of Part 4 (see section 54(2)).

Register of Regulated Surrogacy Statements

87 Register of Regulated Surrogacy Statements

- (1) The HFEA must keep a register of regulated surrogacy statements that it receives from a person holding a licence or a person to whom a licence applies.
- (2) The register is to be known as the Register of Regulated Surrogacy Statements.
- (3) The reference in subsection (1) to regulated surrogacy statements is a reference only to statements whose completion made a surrogacy agreement a regulated surrogacy agreement in relation to a child (see section 4(4)).

88 Request for regulated surrogacy statement

- (1) This section applies if—
 - (a) an individual asks the HFEA for a copy of a regulated surrogacy statement relating to the individual,
 - (b) the individual is not a child without capacity or competence in relation to the statement, and
 - (c) the individual has been given a suitable opportunity to receive appropriate counselling about the implications of the disclosure of the statement.
- (2) The HFEA must give the individual—
 - (a) a copy of the statement, or
 - (b) written confirmation that the Register of Regulated Surrogacy Statements does not include such a statement.

- (3) For the purposes of this section, a regulated surrogacy statement relates to an individual if it relates to a surrogacy agreement under which an assisted reproduction procedure was carried out as a result of which the individual was born.

89 Requests and fees

- (1) A request made by an applicant under section 88 must be made in the form and manner determined by the HFEA.
- (2) The HFEA may determine the form of a request, and the manner of making a request, either generally or in relation to a particular description of request.
- (3) The HFEA may charge such fees as it thinks fit in connection with requests under section 88.
- (4) The HFEA may charge different fees under this section in connection with different descriptions of request.

The Surrogacy Register

90 The Surrogacy Register

- (1) The HFEA must keep a register of specified information provided to the HFEA relating to—
 - (a) Part 1 surrogate-born individuals, and
 - (b) persons involved with, or with an agreement or other arrangements for, an assisted reproduction procedure as a result of which a Part 1 surrogate-born individual was born.
- (2) The register is to be known as the Surrogacy Register.
- (3) The reference in subsection (1) to information provided to the HFEA does not include information provided to the HFEA for the purposes of a voluntary contact register kept by the HFEA under section 100.
- (4) In this section “specified” means specified in regulations made by the Secretary of State.
- (5) The Secretary of State must consult the HFEA before making regulations under this section.

91 Information which may be specified

- (1) Regulations under section 90 may, among other things, specify information relating to—
 - (a) a surrogate under a Part 1 surrogacy agreement;
 - (b) an intended parent under a Part 1 surrogacy agreement;
 - (c) an individual whose gametes were used to bring about the creation of an embryo from which a Part 1 surrogate-born individual developed;

- (d) a person involved in organising or carrying out an assisted reproduction procedure as a result of which a Part 1 surrogate-born individual was born.
- (2) The reference in subsection (1)(c) to information about an individual whose gametes were used includes, where relevant, the fact that the person donated their gametes anonymously.
- (3) Regulations under section 90 may, among other things—
 - (a) make provision by reference to the source of the information;
 - (b) make provision by reference to the HFEA’s opinion of the accuracy of the information;
 - (c) specify information which, taken on its own or together with other information, identifies an individual or enables an individual to be identified.

92 Information recorded by the HFEA in another register

The Secretary of State may by regulations provide that, where information specified in regulations under section 90 is recorded in the register kept by the HFEA under section 31 of the Human Fertilisation and Embryology Act 1990, the Surrogacy Register must or may contain a statement that the information is recorded in that register, instead of containing the information.

93 Contact details of individuals with Part 1 surrogate siblings

- (1) The HFEA must include on the Surrogacy Register contact details provided to the HFEA by an individual who is not a Part 1 surrogate-born individual if the HFEA is satisfied that the individual has, or may have, one or more Part 1 surrogate siblings.
- (2) Subsection (1) does not apply to contact details provided to the HFEA for the purposes of a voluntary contact register kept by the HFEA under section 100.

94 Requests for information about surrogacy

- (1) This section applies if—
 - (a) an individual (the “applicant”) asks the HFEA whether the Surrogacy Register contains information showing that the applicant is, or may be, a Part 1 surrogate-born individual,
 - (b) the applicant—
 - (i) is aged 16 or over, or
 - (ii) is aged under 16 but is not a child without capacity or competence in relation to the information, and
 - (c) the applicant has been given a suitable opportunity to receive appropriate counselling about the implications of receiving information in accordance with this section.
- (2) The HFEA must give the applicant a notice which—

- (a) states whether or not the Surrogacy Register includes such information,
 - (b) where relevant, contains so much of that information as the HFEA is required to give by regulations made by the Secretary of State (but no other information),
 - (c) states whether or not the Surrogacy Register includes information showing that the applicant has Part 1 surrogate siblings, and
 - (d) where relevant, subject to subsection (4), states –
 - (i) how many Part 1 surrogate siblings the applicant has,
 - (ii) their sex, and
 - (iii) the year in which they were born.
- (3) Regulations under subsection (2)(b) may not require the HFEA to give the applicant information which identifies a person involved in the surrogacy if, at the time the request under subsection (1) is made, the applicant is a child without capacity or competence in relation to the information.
- (4) The HFEA must not include the information described in subsection (2)(d) in the notice if it considers that special circumstances exist which increase the likelihood that doing so would enable the applicant –
- (a) to identify a Part 1 surrogate sibling, or
 - (b) to identify a person involved in the surrogacy, in a case in which the HFEA is not required by regulations under subsection (2)(b) to give the applicant information which identifies the person.
- (5) In this section, “person involved in the surrogacy”, in relation to an applicant, means a person involved with, or with an agreement or other arrangements for, the assisted reproduction procedure as a result of which the applicant was born, including a type of person described in section 91(1).

95 Requests for information about intended spouse etc

- (1) This section applies if –
- (a) an individual (“the applicant”) asks the HFEA whether the Surrogacy Register contains information showing that the applicant is, or may be, a Part 1 surrogate sibling of another individual (the “subject”),
 - (b) the subject is –
 - (i) a person whom the applicant proposes to marry,
 - (ii) a person with whom the applicant proposes to enter into a civil partnership, or
 - (iii) a person with whom the applicant is, or proposes to be, in a sexual relationship, and
 - (c) conditions 1 to 3 are satisfied.
- (2) The HFEA must give the applicant a notice which states whether or not the Surrogacy Register includes such information.
- (3) Condition 1 is that –
- (a) the applicant is aged 16 or over, and

- (b) if the applicant does not propose to marry the subject or enter into a civil partnership with them, the subject is aged 16 or over.
- (4) Condition 2 is that the HFEA has received notice in writing from the subject consenting to the applicant making the request (and that notice has not been withdrawn).
- (5) Condition 3 is that the applicant and the subject have each been given a suitable opportunity to receive appropriate counselling about the implications of receiving information in accordance with this section.

96 Requests in relation to information about Part 1 surrogate siblings

- (1) This section applies if—
 - (a) an individual (“the disclosing individual”) asks the HFEA to disclose some or all of the information on the Surrogacy Register relating to the individual (“the agreed information”) to—
 - (i) the individual’s Part 1 surrogate siblings, or
 - (ii) the individual’s Part 1 surrogate siblings of a particular description,
 - (b) the individual is not a child without capacity or competence in relation to the disclosure of the information, and
 - (c) the individual has been given a suitable opportunity to receive appropriate counselling about the implications of the disclosure of the agreed information in accordance with this section.
- (2) The HFEA must give a notice containing the agreed information to each Part 1 surrogate sibling of the individual who—
 - (a) has asked the HFEA for information contained in the Surrogacy Register about—
 - (i) any Part 1 surrogate siblings, or
 - (ii) any Part 1 surrogate siblings of a description which includes the individual,
 - (b) has not withdrawn the request,
 - (c) where relevant, falls within the description mentioned in subsection (1)(a)(ii),
 - (d) is not a child without capacity or competence in relation to the information, and
 - (e) has been given a suitable opportunity to receive appropriate counselling about the implications of receiving information in accordance with this section.
- (3) The HFEA must not include information in the notice if it considers that doing so would enable the disclosing individual or the recipient of the notice to identify an individual whose gametes were used to bring about the creation of an embryo from which either of them developed (a “donor”).
- (4) Subsection (3) does not apply if—

- (a) the donor has consented to their identity being disclosed to, or to persons of a description which includes, the disclosing individual or the recipient of the notice, or
- (b) that individual or that recipient (or both) could obtain information which would identify the donor by making a request under section 94.

97 Requests and fees

- (1) A request made by an applicant under section 94, 95 or 96 must be made in the form and manner determined by the HFEA.
- (2) The HFEA may determine the form of a request, and the manner of making a request, either generally or in relation to a particular description of request.
- (3) The HFEA may charge fees in connection with requests under section 94, 95 or 96.
- (4) The HFEA may charge different fees under this section for different descriptions of request.

98 Information to be provided to the Registrar General

- (1) This section applies where—
 - (a) a claim is made before the Registrar General that an individual (“the subject”) is or is not a parent of another individual,
 - (b) for the purposes of any function of the Registrar General, it is necessary or desirable to determine whether the claim is or may be well-founded, and
 - (c) the Registrar General gives the HFEA a notice asking whether any information on the Surrogacy Register tends to show that the subject may be a parent of the other individual by virtue of—
 - (i) section 4(1), or
 - (ii) an order under section 15, 17, 19 or 21.
- (2) The HFEA must—
 - (a) confirm to the Registrar General whether or not the Surrogacy Register includes such information, and
 - (b) if it does, disclose the information to the Registrar General.
- (3) In this section “the Registrar General” means—
 - (a) the Registrar General for England and Wales, or
 - (b) the Registrar General of Births, Deaths and Marriages for Scotland.

99 Information to be provided to courts

- (1) This section applies where, in proceedings before a court, the court is required to determine whether an individual is or is not a parent of another individual by virtue of—

- (a) section 4(1), or
 - (b) an order under section 15, 17, 19 or 21.
- (2) The court may, on the application of a party to the proceedings, make an order requiring the HFEA –
- (a) to confirm whether or not the Surrogacy Register includes such information, and
 - (b) if it does, to disclose so much of that information as is specified in the order to the court.
- (3) A court may not make an order under this section requiring the HFEA to give the court information about an individual where –
- (a) the individual’s gametes were used to bring about the creation of an embryo from which a Part 1 surrogate-born individual developed, but
 - (b) the individual is not the surrogate or an intended parent under the surrogacy agreement relating to the assisted reproduction procedure as a result of which the Part 1 surrogate-born individual was born.
- (4) A court may not make an order under this section unless it is satisfied that the interests of justice require it to do so, taking into account, among other things –
- (a) any representations made by an individual who may be affected by the disclosure, and
 - (b) the welfare of any individual aged under 18 who may be affected by the disclosure.
- (5) If the proceedings before the court are civil proceedings, the court –
- (a) may direct that the whole or any part of the proceedings on the application for an order under this section is to be heard in private, and
 - (b) if it makes an order under this section, may then or later direct that the whole or any part of any later stage of the proceedings is to be heard in private.
- (6) An application for a direction under subsection (5) must be heard in private, unless the court directs otherwise.

Voluntary contact registers

100 Power of the HFEA to keep a voluntary contact register

- (1) In this section, a “voluntary contact register” means a register of individuals who have expressed their wish to receive information about individuals in relation to whom they are connected by surrogacy.
- (2) The HFEA may –
- (a) keep a voluntary contact register in such manner as it thinks fit;
 - (b) determine criteria for eligibility for inclusion on the register;
 - (c) determine the information that may be included on the register;

- (d) charge a fee to individuals who wish information about them to be entered on the register;
 - (e) make arrangements for the disclosure of information on the register between individuals who appear to the HFEA to be connected by surrogacy;
 - (f) impose conditions preventing an individual (“A”) from disclosing information to another individual (“B”) to whom A is connected by surrogacy where that information would identify a third person who is connected by surrogacy to A or B.
- (3) The HFEA may charge different fees under subsection (2)(d) for different descriptions of case.
- (4) For the purposes of this section two individuals are “connected by surrogacy” if –
- (a) one of them is a surrogate-born individual and the other is the woman who gave birth to that individual, or
 - (b) they are surrogate siblings.
- (5) In subsection (4), “surrogate-born individual” means –
- (a) a Part 1 surrogate-born individual, or
 - (b) an individual in relation to whom a parental order was made under –
 - (i) section 54 or 54A of the Human Fertilisation and Embryology Act 2008, or
 - (ii) section 30 of the Human Fertilisation and Embryology Act 1990.
- (6) For the purposes of subsection (4), individuals are “surrogate siblings” of each other where –
- (a) the same woman gave birth to both of them, and
 - (b) at least one of them is a surrogate-born individual.

101 Financial assistance for other voluntary contact registers

- (1) The HFEA may, instead of keeping a voluntary contact register, make arrangements with another person for that person to keep such a register.
- (2) The HFEA may give financial assistance to a person who keeps a voluntary contact register in accordance with arrangements made under subsection (1).
- (3) The HFEA may give financial assistance under this section in any form, including by way of –
 - (a) grants,
 - (b) loans,
 - (c) guarantees, or
 - (d) incurring expenditure for the person assisted.
- (4) The HFEA may give financial assistance under this section on such terms and conditions as the HFEA considers appropriate.

- (5) A person receiving assistance under this section must comply with the terms and conditions on which it is given and compliance may be enforced by the HFEA.
- (6) In this section, “voluntary contact register” has the same meaning as in section 100.

Restrictions on disclosure of information

102 Restrictions on disclosure of relevant surrogacy-related information

- (1) A person must not disclose relevant surrogacy-related information which the person obtained in the person’s capacity as –
 - (a) a member or employee of the HFEA,
 - (b) a person engaged by the HFEA to provide services to the HFEA,
 - (c) a person employed by, or engaged to provide services to, a person described in paragraph (b),
 - (d) a person holding a licence or a person to whom a licence applies, or
 - (e) a person to whom a direction has been given by virtue of section 65.
- (2) Subsection (1) is subject to the exceptions in section 103 and regulations made under that section.
- (3) In this section, “relevant surrogacy-related information” means information relating to –
 - (a) a Part 1 surrogate-born individual,
 - (b) a person involved with, or with an agreement or other arrangements for, an assisted reproduction procedure as a result of which such an individual was born, including a person described in section 91(1),
 - (c) a Part 1 surrogate sibling of another individual, or
 - (d) a person about whom information is recorded on a voluntary contact register kept by –
 - (i) the HFEA under section 100, or
 - (ii) any other person in accordance with arrangements made by the HFEA under section 101.

103 Exceptions from restrictions

- (1) Section 102(1) does not apply to a disclosure of information in any of the following cases –
 - (a) where the disclosure is made to a member or employee of the HFEA;
 - (b) where the disclosure is made to or by a person described in section 102(1)(b) for the purpose of the provision of services which that person is engaged to provide to the HFEA;

- (c) where the disclosure is made by a person described in section 102(1)(c) for the purpose of enabling a person described in section 102(1)(b) to provide services which that person is engaged to provide to the HFEA;
- (d) where the disclosure is made by a member or employee of the HFEA to a person discharging a regulatory function for the purpose of assisting that person to carry out that function;
- (e) where the disclosure is made for the purposes of establishing, in proceedings relating to an application for an order under section 15, 17 or 19, whether the requirement in section 14, a condition in section 16, 18 or 19 or (where relevant) a requirement under Schedule 1 is met;
- (f) where the disclosure is made for the purposes of establishing, in proceedings relating to an application for an order under section 21, whether the requirement in subsection (1) of that section, a condition in that section or (where relevant) a requirement under Schedule 1 is met;
- (g) where the disclosure is made to—
 - (i) a person holding a licence, or
 - (ii) a person to whom a licence applies,for the purposes of that person's functions;
- (h) where the disclosure is made in accordance with a direction given by virtue of section 65;
- (i) where the disclosure is made in accordance with section 88 or any of sections 93 to 97;
- (j) where the disclosure is made by a member or employee of the HFEA to the Registrar General in accordance with a request under section 98;
- (k) where the disclosure is made by a member or employee of the HFEA in accordance with an order of a court under section 99;
- (l) where the information is not identifying surrogacy information and the disclosure is made with the consent required by section 104;
- (m) where the disclosure is made to an individual who is not a surrogate-born individual or a surrogate sibling and the information relates only to that individual;
- (n) where the disclosure is made so that no individual can be identified from the information;
- (o) where the information has been lawfully made available to the public before the disclosure is made;
- (p) subject to subsection (2), where the disclosure is necessary—
 - (i) for the purpose of the investigation of an offence (or suspected offence),
 - (ii) for the purposes of proceedings, or
 - (iii) for a purpose preliminary to proceedings or in connection with proceedings.

- (2) Section 102(1) applies to a disclosure described in subsection (1)(p)(i) or (iii) so far as it involves –
 - (a) disclosure of identifying surrogacy information, or
 - (b) disclosure in circumstances in which section 99(1) applies (court required to determine question about parenthood under this Act) where –
 - (i) the information is relevant to the question described in section 99(1), and
 - (ii) the disclosure is made by a person falling within section 102(1)(b) to (e).
- (3) The Secretary of State may by regulations provide for additional exceptions from section 102(1).
- (4) Regulations under this section may not provide for exceptions for a disclosure described in subsection (2).
- (5) In this section –
 - “identifying surrogacy information” means information enabling an individual to be identified as –
 - (a) a surrogate under a surrogacy agreement,
 - (b) an intended parent under a surrogacy agreement, or
 - (c) an individual whose gametes were used to bring about the creation of an embryo from which an individual developed;
 - “proceedings” includes any formal procedure for dealing with a complaint;
 - “the Registrar General” has the same meaning as in section 98;
 - “regulatory function” has the same meaning as in the Legislative and Regulatory Reform Act 2006 (see section 32 of that Act);
 - “surrogate-born individual” and “surrogate sibling” have the meaning given in section 100.

104 Consent required to authorise certain disclosures

- (1) This section has effect for the purposes of the disclosure of information in reliance on section 103(1)(l).
- (2) The consent required by this section is the consent of each individual who can be identified from the information.
- (3) For the purposes of this section, consent may only be given by one person at the request of another if, before it is given, the person making the request takes reasonable steps to explain the implications of complying with the request to the person giving the consent.
- (4) For the purposes of this section –
 - (a) consent may be given by an individual of any age other than an individual who is a child without capacity or competence in relation to the disclosure of the information, and

- (b) consent in respect of such a child may be given by –
 - (i) a person having parental responsibility for the child, or
 - (ii) where the child is habitually resident in Scotland, a person who has parental responsibilities and parental rights in respect of the child.

105 Offence

- (1) A person who discloses information in contravention of section 102(1) is guilty of an offence and liable –
 - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine, or to both;
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or to both;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or to both.
- (2) It is a defence for a person charged with an offence under this section to prove –
 - (a) that at the material time the person was a person holding a licence, a person to whom a licence applied or a person to whom a direction had been given by virtue of section 65, and
 - (b) that the person took reasonable steps, and exercised all due diligence, to avoid committing the offence.
- (3) Paragraphs 2 to 8 of Schedule 3 apply in connection with an offence under this section as they apply in connection with an offence under section 71.

PART 6

MISCELLANEOUS AND GENERAL

Registration of births and deaths

106 Registration of child's birth (England and Wales)

Schedule 5 contains amendments of the Births and Deaths Registration Act 1953 relating to the registration of the birth of a child who has a parent or parents by virtue of section 4(1).

107 Registration of child's birth (Scotland)

Schedule 6 contains amendments of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 relating to the registration of the birth of a child who has a parent or parents by virtue of section 4(1).

108 Registration of death: qualified informants

- (1) In section 41(1) of the Births and Deaths Registration Act 1953, in the definition of “relative” –
- (a) for “includes” substitute “, in relation to a person, includes –”;
 - (b) the words from “a relative” to the end of the definition become paragraph (a);
 - (c) in that paragraph (a), after “relative”, insert “of the person”;
 - (d) at the end of that paragraph (a) insert “and
 - (b) an intended parent or surrogate under a surrogacy agreement entered into after the commencement of section 108(1) of the Surrogacy Act 2023 who but for this paragraph would not be treated as a relative of the person and who –
 - (i) intends to apply for an order under Chapter 3 of Part 1 of that Act for the person to be treated in law as their child, or
 - (ii) has such an application pending;”.
- (2) In section 56(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965, for the definition of “relative” substitute –
- ““relative”, in relation to a person, includes –
- (a) a relative of the person by marriage,
 - (b) the civil partner of the person,
 - (c) anyone related to the civil partner of the person, and
 - (d) for the purposes of section 23, an intended parent or surrogate under a surrogacy agreement entered into after the commencement of 108(2) of the Surrogacy Act 2023 who but for this paragraph would not be treated as a relative of the person and who –
 - (i) intends to apply for an order under Chapter 3 of Part 1 of that Act for the person to be treated in law as their child, or
 - (ii) has such an application pending;”.

109 Registration of still-birth (England and Wales)

- (1) The Births and Deaths Registration Act 1953 is amended as follows.
- (2) In section 1 (particulars of birth to be registered), after subsection (3), insert –
- “(3A) In the case of a still-born child carried as a result of an assisted reproduction procedure carried out under a surrogacy agreement, the intended parent or parents under the agreement are also qualified to give information concerning the still-birth (but see section 11(4)).
- (3B) Regulations under subsection (1) prescribing the particulars to be entered in a register of still-births in the case of a still-born child carried

as a result of an assisted reproduction procedure carried out under a surrogacy agreement may require that in prescribed circumstances—

- (a) the name of the intended parent or parents are entered as parents of the still-born child, and
 - (b) the name of no other person is entered as mother, father or parent of the still-born child.”
- (3) In section 9 (giving of information to a person other than the registrar), after subsection (5) insert—
- “(5A) Any documents required to be produced by section 11(4) may be—
- (a) produced to the officer in whose presence a declaration under subsection (1) is made, and
 - (b) sent by that officer with the declaration to the registrar.”
- (4) In section 11 (special provision as to registration of still-birth), after subsection (3) insert—
- “(4) Notwithstanding section 1(3A) no person is entitled, as an intended parent under a surrogacy agreement, to give information concerning the still-birth of a child carried as a result of an assisted reproduction procedure carried out under the agreement, and the registrar is not to enter the name of any such person as parent of the still-born child, except on the production by the person of—
- (a) a declaration by the person that—
 - (i) the child was carried as a result of an assisted reproduction procedure carried out under a surrogacy agreement and
 - (ii) the person is the intended parent, or one of the intended parents, under the agreement, and
 - (b) a declaration by the surrogate that—
 - (i) the surrogate carried the child as a result of an assisted reproduction procedure carried out under a surrogacy agreement, and
 - (ii) the surrogate consents to the name of the person being entered in the register as parent of the still-born child.”

110 Registration of still-birth (Scotland)

- (1) The Registration of Births, Deaths and Marriages (Scotland) Act 1965 is amended as follows.
- (2) In section 21 (still-births), after subsection (1) insert—
- “(1A) In the case of a still-born child carried as a result of an assisted reproduction procedure carried out under a surrogacy agreement, the intended parent or parents under the agreement are also qualified to give information concerning the still-birth.

- (1B) Notwithstanding subsection (1A) no person is entitled, as an intended parent under a surrogacy agreement, to give information concerning the still-birth of a child carried as a result of an assisted reproduction procedure carried out under the agreement, and the district registrar is not to enter the name of any such person as parent of the still-born child, except on the production by the person of—
- (a) a declaration by the person that—
 - (i) the child was carried as a result of an assisted reproduction procedure carried out under a surrogacy agreement, and
 - (ii) the person is the intended parent, or one of the intended parents, under the agreement, and
 - (b) a declaration by the surrogate that—
 - (i) the surrogate carried the child as a result of an assisted reproduction procedure carried out under a surrogacy agreement, and
 - (ii) the surrogate consents to the name of the person being entered in the register as parent of the still-born child.
- (1C) Regulations under section 13(1) prescribing the particulars to be entered in a register of still-births in the case of a still-born child carried as a result of an assisted reproduction procedure carried out under a surrogacy agreement may require that in prescribed circumstances—
- (a) the name of the intended parent or parents are entered as parents of the still-born child, and
 - (b) the name of no other person is entered as mother, father or parent of the still-born child.”

111 Registration: interpretation

- (1) In section 41 of the Births and Deaths Registration Act 1953, after subsection (3) insert—
- “(4) Terms used in this Act which are defined for the purposes of the Surrogacy Act 2023 have the same meaning in this Act as they have in that Act.”
- (2) In section 56 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965, after subsection (3) insert—
- “(4) Terms used in this Act which are defined for the purposes of the Surrogacy Act 2023 have the same meaning in this Act as they have in that Act.”

Employment rights and maternity allowance

112 Statutory rights to time off work, leave, pay and allowance

Schedule 7 contains amendments of—

- (a) the Employment Rights Act 1996,
- (b) the Social Security Contributions and Benefits Act 1992, and
- (c) the Social Security Act 1989.

Succession

113 Application of succession rules where regulated surrogacy agreement (England and Wales)

- (1) Section 55 of the Administration of Estates Act 1925 (interpretation) is amended as follows.
- (2) In subsection (2) (child living at death of an intestate person includes unborn child), at the end insert “, but see subsections (2A) to (2D)”.
- (3) After subsection (2) insert –
 - “(2A) Subsection (2B) applies where –
 - (a) a child (“C”) has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023 (regulated surrogacy agreements), and
 - (b) any such parent died before the birth of C.
 - (2B) C is to be treated as a child of the deceased parent living at the parent’s death.
 - (2C) Subsection (2D) applies where –
 - (a) a child (“C”) has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023, and
 - (b) a person who, but for that provision, would have been treated in law as a parent of C, died before the birth of C.
 - (2D) C is not to be treated as a child of the deceased person living at the person’s death.”

114 Application of succession rules in case of death of intended parent (Scotland)

After Part IV of the Succession (Scotland) Act 1964 insert –

“PART IVA

CHILD BORN AS A RESULT OF SURROGACY AGREEMENT

24A Child born as a result of regulated surrogacy agreement

- (1) Subsection (2) applies where –
 - (a) a child (“C”) has a parent (“P”) by virtue of section 4(1) of the Surrogacy Act 2023 (regulated surrogacy agreement), and
 - (b) P died before the birth of C.

- (2) For all purposes relating to succession to P (whether testate or intestate), C is to be treated as if C had been a child of P not yet born when P died.
- (3) Subsection (4) applies where—
 - (a) a child (“C”) has a parent by virtue of section 4(1) of the Surrogacy Act 2023, and
 - (b) a person who, but for that provision, would have been treated in law as a parent of C (“A”), died before the birth of C.
- (4) For all purposes relating to succession to A (whether testate or intestate), C is to be treated as if C had not been a child of A not yet born when A died.
- (5) In subsections (2) and (4), the references to succession to a person include a reference to the distribution of any property in consequence of the person’s death and any claim to legal rights or the prior rights of a surviving spouse of the person’s estate.”

Citizenship

115 Children born pursuant to surrogacy agreement: parents for purposes of conferral of citizenship

- (1) The British Nationality Act 1981 is amended as follows.
- (2) In section 4E (general conditions), after paragraph (ca) (but before the final “and”) insert—
 - “(cb) no person is treated as a parent of P by virtue of section 4(1) of the Surrogacy Act 2023 (parents of child born pursuant to regulated surrogacy agreement);”.
- (3) In section 17B (British overseas territories citizenship: unmarried fathers, general conditions), after paragraph (c) (but before the final “and”) insert—
 - “(ca) no person is treated as a parent of P by virtue of section 4(1) of the Surrogacy Act 2023 (parents of child born pursuant to regulated surrogacy agreement);”.
- (4) In section 50 (interpretation)—
 - (a) in subsection (9), at the end insert—

“But, in relation to a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023 (parents of child born pursuant to regulated surrogacy agreement), see section 12 of that Act (interpretation of references to mother or father).”;
 - (b) in subsection (9A)—
 - (i) in paragraph (a), at the end (but before the final “or”), insert “, but see section 27 of the Surrogacy Act 2023 (spouse or civil partner of surrogate not to be treated as parent)”;

(ii) at the end insert—

“But, in relation to a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023, see section 12 of that Act.”

Overseas parental orders

116 Giving parental responsibility prior to application for parental status abroad (England and Wales)

- (1) Subsection (2) applies in a case to which section 15 applies (sole intended parent under surrogacy agreement).
- (2) On an application made to the High Court in England and Wales (“the court”) by the intended parent, the court may make an order giving parental responsibility for the child to the intended parent if—
 - (a) the condition in subsection (5) of section 16 is not met (domicile or habitual residence of intended parent),
 - (b) all of the other conditions in that section are met, and
 - (c) the court is satisfied that the intended parent intends steps to be taken under the law of a country or territory outside the British Islands that are equivalent to applying for an order under section 15 or 19(1)(a).
- (3) Subsection (4) applies in a case to which section 17 applies (two intended parents under surrogacy agreement).
- (4) On an application made to the court by one or both of the intended parents, the court may make an order giving parental responsibility for the child to the applicant or applicants if—
 - (a) the condition in subsection (6) of section 18 is not met (domicile or habitual residence of intended parent or parents),
 - (b) all of the other conditions in that section are met, and
 - (c) the court is satisfied that the applicant or both of the applicants intend steps to be taken under the law of a country or territory outside the British Islands that are equivalent to applying for an order under section 17 or 19(1)(b).
- (5) In deciding whether or not to make an order under this section, the paramount consideration of the court must be the child’s welfare, throughout the child’s life.
- (6) For the purposes of this section—
 - (a) any reference in section 16 to an application or order under section 15 is to be read as a reference to an application or order under subsection (2), and
 - (b) any reference in section 18 to an application or order under section 17 is to be read as a reference to an application or order under subsection (4).

117 Supplementary effects of order under section 116

- (1) The making of an order under section 116 in relation to a child extinguishes the parental responsibility of the surrogate for the child but only if—
 - (a) the surrogate has freely, and with full understanding of what is involved, agreed unconditionally to the making of the order, or
 - (b) in a case where the agreement of the surrogate is not required (see sections 16(7) and 18(8)), the court so determines in the order.
- (2) The making of an order under section 116 in relation to a child also extinguishes—
 - (a) any order under the Children Act 1989 or the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) made in relation to the child;
 - (b) any order under the Children (Scotland) Act 1995 made in relation to the child, other than—
 - (i) an order under section 9, 11(1)(d) or 13 of that Act, or
 - (ii) an exclusion order within the meaning of section 76(1) of that Act;
 - (c) any child assessment order or child protection order, within the meaning given in section 202(1) of the Children's Hearings (Scotland) Act 2011 (asp 1), made in relation to the child;
 - (d) any duty arising by virtue of an agreement or an order of a court to make payments, so far as the payments are in respect of the child's maintenance or upbringing for any period after the making of the order.
- (3) Subsection (2)(d) does not apply to a duty arising by virtue of an agreement—
 - (a) which constitutes a trust, or
 - (b) which expressly provides that the duty is not to be extinguished by the making of an order under section 116.
- (4) Subsection (5) applies if—
 - (a) an order is made under section 116 that does not extinguish the parental responsibility of the surrogate for the child, and
 - (b) the child subsequently becomes treated under the law of a country or territory outside the British Islands as the child of the intended parent or of either or both of the intended parents.
- (5) The surrogate's parental responsibility is extinguished on the child becoming treated under that law as the child of the intended parent or parents.
- (6) An order under section 116 does not affect parental responsibility so far as it relates to any period before the making of the order.

118 Giving parental responsibilities and parental rights prior to application for parental status abroad (Scotland)

- (1) Subsection (2) applies in a case to which section 15 applies (sole intended parent under surrogacy agreement).
- (2) On an application made to the court in Scotland by the intended parent, the court may make an order giving parental responsibilities and parental rights in respect of the child to the intended parent if—
 - (a) the condition in subsection (5) of section 16 is not met (domicile or habitual residence of intended parent),
 - (b) all of the other conditions in that section are met, and
 - (c) the court is satisfied that the intended parent intends steps to be taken under the law of a country or territory outside the British Islands that are equivalent to applying for an order under section 15 or 19(1)(a).
- (3) Subsection (4) applies in a case to which section 17 applies (two intended parents under surrogacy agreement).
- (4) On an application made to the court in Scotland by one or both of the intended parents, the court may make an order giving parental responsibilities and parental rights in respect of the child to the applicant or applicants if—
 - (a) the condition in subsection (6) of section 18 is not met (domicile or habitual residence of intended parent or parents),
 - (b) all of the other conditions in that section are met, and
 - (c) the court is satisfied that the applicant or both of the applicants intend steps to be taken under the law of a country or territory outside the British Islands that are equivalent to applying for an order under section 17 or 19(1)(b).
- (5) In deciding whether or not to make an order under this section, the paramount consideration of the court must be the child’s welfare, throughout the child’s life.
- (6) For the purposes of this section—
 - (a) any reference in section 16 to an application or order under section 15 is to be read as a reference to an application or order under subsection (2), and
 - (b) any reference in section 18 to an application or order under section 17 is to be read as a reference to an application or order under subsection (4).
- (7) In this section “the court” means the Court of Session or a sheriff of the sheriffdom within which the child is when the application under this section is made.

119 Supplementary effects of order under section 118

- (1) The making of an order under section 118 extinguishes the parental responsibilities and parental rights of the surrogate in respect of the child but only if—
 - (a) the surrogate has freely, and with full understanding of what is involved, agreed unconditionally to the making of the order, or
 - (b) in a case where the agreement of the surrogate is not required (see sections 16(7) and 18(8)), the court so determines in the order.
- (2) The making of an order under section 118 in relation to a child also extinguishes—
 - (a) any order under the Children (Scotland) Act 1995 made in relation to the child, other than—
 - (i) an order under section 9, 11(1)(d) or 13 of that Act, or
 - (ii) an exclusion order within the meaning of section 76(1) of that Act;
 - (b) any child assessment order or child protection order, within the meaning given in section 202(1) of the Children’s Hearings (Scotland) Act 2011, made in relation to the child;
 - (c) any order under the Children Act 1989 or the Children (Northern Ireland) Order 1995 made in relation to the child;
 - (d) any duty arising by virtue of an agreement or an order of a court to make payments, so far as the payments are in respect of the child’s maintenance or upbringing for any period after the making of the order;
 - (e) any duty owed to the child immediately before the making of the order—
 - (i) to pay or provide aliment in respect of any period occurring after the making of the order, or
 - (ii) to make any payment arising out of parental responsibilities and parental rights in respect of such a period.
- (3) But the making of an order under section 118 does not extinguish a duty arising under a deed or agreement—
 - (a) which constitutes a trust, or
 - (b) which expressly provides that the duty is not to be extinguished by the making of an order under section 118.
- (4) Subsection (5) applies if—
 - (a) an order is made under section 118 that does not extinguish the parental responsibilities and parent rights of the surrogate in respect of the child, and
 - (b) the child subsequently becomes treated under the law of a country or territory outside the British Islands as the child of the intended parent or of either or both of the intended parents.

- (5) The surrogate's parental responsibilities and parental rights are extinguished on the child becoming treated under that law as the child of the intended parent or parents.
- (6) An order under section 118 does not affect parental responsibilities and parental rights so far as they relate to any period before the making of the order.

120 Restriction on taking children out of the United Kingdom

- (1) Unless the removal condition is met, a child who is habitually resident in the United Kingdom must not be removed from the United Kingdom to a country or territory outside the British Islands for the purpose of steps being taken under the law of that country or territory that are equivalent to applying for an order under section 15, 17 or 19.
- (2) The removal condition is met if—
 - (a) the person or persons who, as a result of the steps mentioned in subsection (1) being taken, would be treated as the parent or parents of the child under the law of the country or territory concerned, have parental responsibility for or (as the case may be) parental responsibilities and parental rights in respect of the child—
 - (i) under section 32 or 35 (circumstances in which intended parents have parental responsibility, or parental responsibilities and parental rights, under surrogacy agreement that is not a regulated agreement),
 - (ii) by virtue of an order under section 116 or 118, or
 - (b) the child has a parent or parents by virtue of section 4(1) and it is that parent or those parents who, as a result of the steps mentioned in subsection (1) being taken, would be treated as the parent or parents of the child under the law of the country or territory concerned.
- (3) Removing a child from the United Kingdom includes arranging to do so; and the circumstances in which a person arranges to remove a child from the United Kingdom include those where the person—
 - (a) enters into an arrangement for the purpose of facilitating such a removal of the child,
 - (b) initiates or takes part in any negotiations of which the purpose is the conclusion of an arrangement within paragraph (a), or
 - (c) causes another person to take any step mentioned in paragraph (a) or (b).

For these purposes, an arrangement includes an agreement (whether or not enforceable).

- (4) A person who removes a child from the United Kingdom in contravention of subsection (1) is guilty of an offence.
- (5) A person is not guilty of an offence under subsection (4) of causing a person to take any step mentioned in paragraph (a) or (b) of subsection (3) unless it

- is proved that the person knew, or had reason to suspect, that the step taken would contravene subsection (1).
- (6) Subsection (5) only applies if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.
- (7) A person guilty of an offence under this section is liable on summary conviction—
- (a) in England and Wales, to imprisonment for a term not exceeding the maximum term for summary offences or a fine, or to both;
 - (b) in Scotland, to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or to both.
- (8) In any proceedings under this section—
- (a) a report by a British consular officer or a deposition made before a British consular officer and authenticated under the signature of that officer is admissible, upon proof that the officer or the deponent cannot be found in the United Kingdom, as evidence of the matters stated in it, and
 - (b) it is not necessary to prove the signature or official character of the person who appears to have signed any such report or deposition.
- (9) In subsection (7)(a) “the maximum term for summary offences” means—
- (a) if the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 comes into force, 6 months;
 - (b) if the offence is committed after that time, 51 weeks.

Proceedings

121 Certain proceedings under this Act to be family proceedings (England and Wales)

In section 8(4) of the Children Act 1989 (enactments under which proceedings are family proceedings for the purposes of that Act), at the end insert—

“(l) section 10, Chapter 3 of Part 1 and sections 45 and 116 of the Surrogacy Act 2023.”

122 Competence of summary sheriffs in relation to orders under this Act (Scotland)

In schedule 1 to the Courts Reform (Scotland) Act 2014 (civil jurisdiction of summary sheriff), after paragraph 3 insert—

“Surrogacy proceedings

- 3A Proceedings for or in relation to an order under—
- (a) section 10 of the Surrogacy Act 2023 (order that deceased intended parent is parent for birth registration purposes),
 - (b) Chapter 3 of Part 1 of that Act (parental orders),

- (c) section 45 of that Act (recovery of costs by surrogate), or
- (d) section 118 of that Act (order giving parental responsibilities and parental rights prior to application for parental status abroad).”

Consequential repeal

123 Repeal of the Surrogacy Arrangements Act 1985

The Surrogacy Arrangements Act 1985 is repealed.

General

124 Power to make consequential provision

- (1) The Secretary of State may by regulations make provision that is consequential on this Act.
- (2) Regulations under this section may amend, repeal or revoke any enactment passed or made before, or in the same session as, this Act.

125 Regulations

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) A power of the Secretary of State or the HFEA to make regulations under this Act includes power to make—
 - (a) consequential, supplementary, incidental, transitional or saving provision;
 - (b) different provision for different purposes.
- (3) A statutory instrument containing any of the following (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament—
 - (a) regulations under section 25 (supplementary provision about parental orders);
 - (b) regulations under section 40 (permitted costs);
 - (c) regulations under section 49 (enforcement of prohibition on payments: financial penalties);
 - (d) regulations under section 77(7) (exemption from prohibition on advertising surrogacy related services);
 - (e) regulations under section 94(2)(b) (information which HFEA is required to give on request for information about surrogacy);
 - (f) regulations under section 103(3) (power to provide for additional exceptions from restrictions on disclosure of information);
 - (g) regulations under section 124 (consequential provision) that amend or repeal primary legislation.

- (4) Any other statutory instrument containing regulations made by the Secretary of State under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) This section does not apply to regulations under section 128.

126 Interpretation

- (1) In this Act—
 - “embryo” has the same meaning as in the Human Fertilisation and Embryology Act 1990;
 - “enactment” means an enactment contained in, or in an instrument made under—
 - (a) primary legislation, or
 - (b) retained direct EU legislation;
 - “gametes” has the same meaning as in the Human Fertilisation and Embryology Act 1990;
 - “parental responsibilities” and “parental rights” have the meanings given by sections 1(3) and 2(4) of the Children (Scotland) Act 1995;
 - “parental responsibility” has the same meaning as in the Children Act 1989 (see section 3 of that Act);
 - “primary legislation” means—
 - (a) an Act,
 - (b) an Act or Measure of Senedd Cymru, or
 - (c) an Act of the Scottish Parliament.
- (2) In this Act—
 - “assisted reproduction procedure” has the meaning given in section 2(4);
 - “the HFEA” has the meaning given in section 24(1);
 - “intended parent” and “intended parents” have the meaning given in section 2(1);
 - “mandatory costs” has the meaning given in section 6(6);
 - “regulated surrogacy agreement” has the meaning given in section 4(4);
 - “regulated surrogacy statement” has the meaning given in section 5(1);
 - “surrogacy agreement” has the meaning given in section 2(1);
 - “surrogate” has the meaning given in section 2(1).
- (3) For the purposes of this Act, a woman is not to be treated as carrying a child until the embryo has become implanted.
- (4) This Act applies in relation to an individual who is a man by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004 as it applies in relation to a woman.

127 Extent

- (1) The amendments and repeals made by the following provisions extend to England and Wales and Scotland only—
 - (a) section 26 (repeal of parental order provisions in the Human Fertilisation and Embryology Act 2008);
 - (b) section 123 (repeal of the Surrogacy Arrangements Act 1985);
 - (c) paragraphs 3 to 6 of Schedule 2 (consequential amendments of the Human Fertilisation and Embryology Act 2008);
 - (d) Schedule 4 (consequential amendments of the Human Fertilisation and Embryology Act 1990).
- (2) Other amendments or repeals made by this Act have the same extent as the provision amended or repealed.
- (3) The following provisions extend to England and Wales only—
 - (a) section 11(6) (legitimacy of child);
 - (b) section 31 (parental responsibility (England and Wales): regulated surrogacy agreements);
 - (c) section 32 (parental responsibility (England and Wales): other surrogacy agreements);
 - (d) section 82 (offences by bodies corporate and unincorporated associations (England and Wales));
 - (e) section 116 (giving parental responsibility prior to application for parental status abroad (England and Wales));
 - (f) section 117 (supplementary effects of order under section 116).
- (4) The following provisions extend to Scotland only—
 - (a) section 34 (parental responsibilities and parental rights (Scotland): regulated surrogacy agreements);
 - (b) section 35 (parental responsibilities and parental rights (Scotland): other surrogacy agreements);
 - (c) section 37 (interim orders relating to parental responsibilities and parental rights (Scotland));
 - (d) section 118 (giving parental responsibilities and parental rights prior to application for parental status abroad (Scotland));
 - (e) section 119 (supplementary effects of order under section 118).
- (5) Otherwise, this Act extends to England and Wales and Scotland.

128 Commencement

- (1) Sections 124 to 129 come into force on the day this Act is passed.
- (2) Except as provided by subsection (1) this Act comes into force on such day as the Secretary of State may by regulations appoint.
- (3) Different days may be appointed for different purposes.

- (4) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (5) Regulations under this section are to be made by statutory instrument.

129 Short title

This Act may be cited as the Surrogacy Act 2023.

SCHEDULES

SCHEDULE 1

Section 22

COURT ORDERS WHERE CHILD, INTENDED PARENT OR SURROGATE HAS DIED

PART 1

ORDER UNDER SECTION 15, 17 OR 21 WHERE CHILD HAS DIED

General

- 1 An application for an order under section 15, 17 or 21 may be made or continued after the death of the child.

Order under section 15 after child has died

- 2 Where—
 - (a) an application is made under section 15, and
 - (b) the child has died before the court has determined the application, sections 15 and 16 have effect in relation to the application with the modifications set out in paragraph 3.
- 3 The modifications are that—
 - (a) section 15 has effect as if, in subsections (2) and (3), for “may” there were substituted “must”;
 - (b) section 16 has effect as if—
 - (i) where the application is made before the child’s death, in subsection (4), for “both of the application and of the making of the order” there were substituted “of the application”;
 - (ii) where the application is made after the child’s death, subsection (4) were omitted;
 - (iii) subsections (7) and (11) were omitted.

Order under section 17 after child has died

- 4 Where—
 - (a) an application is made under section 17, and
 - (b) the child has died before the court has determined the application, sections 17 and 18 have effect in relation to the application with the modifications set out in paragraph 5.
- 5 The modifications are that—
 - (a) section 17 has effect as if, in subsections (2), (3) and (4), for “may” there were substituted “must”;
 - (b) section 18 has effect as if—

- (i) where the application is made before the child’s death, in subsection (5), for “both of the application and of the making of the order” there were substituted “of the application”;
- (ii) where the application is made after the child’s death, subsection (5) were omitted;
- (iii) subsections (8) and (12) were omitted.

Order under section 21 after child has died

6 Where –

- (a) an application is made under section 21, and
- (b) the child has died before the court has determined the application, section 21 has effect in relation to the application (whether the surrogate reached her decision as mentioned in subsection (5) of that section before or after the child’s death) with the modifications set out in paragraph 7.

7 The modifications are that section 21 has effect as if –

- (a) in subsections (2) and (3), for “may” there were substituted “must”;
- (b) after subsection (7), there were inserted –

“(7A) The court is satisfied that the intended parent has, or both of the intended parents have, freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.”

PART 2

ORDER UNDER SECTION 15 OR 17 WHERE INTENDED PARENT HAS DIED

General

8 The court –

- (a) may make an order under section 15 or 17 providing for a child to be treated in law as the child of an intended parent who has died, but
- (b) may not make such an order if the death occurred in the circumstances mentioned in paragraph 9.

9 An intended parent has died in the circumstances mentioned in this paragraph if –

- (a) the intended parent’s death occurred before the assisted reproduction procedure mentioned in section 14(a) was carried out, and
- (b) the surrogate was aware of the intended parent’s death at the time that the procedure was carried out.

Order under section 15 where intended parent has died

10 Paragraph 11 applies where –

- (a) the surrogacy agreement mentioned in section 14(a) was entered into by only one intended parent, and
 - (b) the intended parent has died otherwise than in the circumstances mentioned in paragraph 9.
- 11 Where this paragraph applies –
- (a) a relevant person may make an application, or continue an application made by the deceased intended parent, for an order under section 15 providing for the child to be treated in law as the child of the deceased intended parent,
 - (b) such an application is to be treated for the purposes of section 15(2) as having been made by the deceased intended parent, and
 - (c) section 16 has effect in relation to the application with the modifications set out in paragraph 12.
- 12 The modifications are that section 16 has effect as if –
- (a) where the application is made before the intended parent’s death, in subsection (4), for “both of the application and of the making of the order” there were substituted “of the application”;
 - (b) where the application is made after the intended parent’s death, subsection (4) were omitted;
 - (c) in subsection (5), for “At the time both of the application and of the making of the order”, there were substituted “At the time of the intended parent’s death”;
 - (d) in subsection (9), the reference to the intended parent included a reference to the person making or continuing the application in reliance on paragraph 11.

Order under section 17 where one intended parent has died

- 13 Paragraph 14 applies where –
- (a) the surrogacy agreement mentioned in section 14(a) was entered into by two intended parents,
 - (b) one of the intended parents has died, and
 - (c) the death occurred otherwise than in the circumstances mentioned in paragraph 9.
- 14 Where this paragraph applies –
- (a) the surviving intended parent may make an application, or continue an application made by the surviving intended parent and the deceased intended parent, for an order under section 17(3) providing that the child is to be treated in law as the child of both of the intended parents,
 - (b) such an application is to be treated for the purposes of section 17(3) as having been made by both of the intended parents, and
 - (c) section 18 has effect in relation to the application with the modifications set out in paragraph 15.
- 15 The modifications are that section 18 has effect as if –

- (a) where the application is made before the death of the deceased intended parent, for subsection (5) there were substituted –
- “(5) The child’s home is with –
- (a) at the time of the application, both of the intended parents, and
- (b) at the time of the making of the order, the surviving intended parent.”;
- (b) where the application is made after the death of the deceased intended parent, in subsection (5)(a), for “with both of the intended parents” there were substituted “with the surviving intended parent”;
- (c) for subsection (6) there were substituted –
- “(6) Either –
- (a) at the time both of the application and of the making of the order, the surviving intended parent is domiciled, or habitually resident, in the United Kingdom or in the Channel Islands or the Isle of Man, or
- (b) at the time of the death of the deceased intended parent, the deceased intended parent was domiciled, or habitually resident, in the United Kingdom or in the Channel Islands or the Isle of Man.”
- 16 Paragraph 17 applies where –
- (a) the surrogacy agreement mentioned in section 14(a) was entered into by two intended parents,
- (b) one of the intended parents has died,
- (c) the death occurred in the circumstances mentioned in paragraph 9,
- (d) the gametes of the deceased intended parent were used in the creation of the embryo from which the child developed, and
- (e) the court makes an order under section 17 for the child to be treated in law as the child of the surviving intended parent.
- 17 Where this paragraph applies the court may, on an application made by the surviving intended parent, make an order providing that the deceased intended parent is to be treated as a parent of the child for the purpose of enabling the deceased intended parent’s particulars to be entered as the particulars of the child’s parent in –
- (a) a register of live-births kept under the Births and Deaths Registration Act 1953, or
- (b) a register of births kept under the Registration of Births, Deaths and Marriages (Scotland) Act 1965.
- 18 A gamete is not a gamete of an intended parent for the purposes of paragraph 16(d) if the gamete does not contain any nuclear DNA of the intended parent.

Order under section 17 where both intended parents have died either post-procedure or pre-procedure without the surrogate's knowledge

- 19 Paragraph 20 applies where –
- (a) the surrogacy agreement mentioned in section 14(a) was entered into by two intended parents,
 - (b) both of the intended parents have died, and
 - (c) both of the deaths occurred otherwise than in the circumstances mentioned in paragraph 9.
- 20 Where this paragraph applies –
- (a) a relevant person may make an application, or continue an application made by both of the deceased intended parents, for an order under section 17(3) providing for the child to be treated in law as the child of both of the deceased intended parents,
 - (b) such an application is to be treated for the purposes of section 17 as having been made by both of the deceased intended parents, and
 - (c) section 18 has effect in relation to the application with the modifications set out in paragraph 21.
- 21 The modifications are that section 18 has effect as if –
- (a) where the application is made before either of the intended parents has died, in subsection (5), for “both of the application and of the making of the order” there were substituted “of the application”;
 - (b) where the application is made after the death of one of the intended parents, for subsection (5) there were substituted –
 - “(5) At the time of the application, the child’s home is with the intended parent who had not died at the time that the application is made.”;
 - (c) where the application is made after the death of both of the intended parents, subsection (5) were omitted;
 - (d) for subsection (6) there were substituted –
 - “(6) Either or both of the intended parents were, at the time of their death, domiciled or habitually resident in the United Kingdom or in the Channel Islands or the Isle of Man.”;
 - (e) in subsection (10), references to the intended parents included a reference to the person making or continuing the application in reliance on paragraph 20.

Order under section 17 where both intended parents have died but only one of them died either post-procedure or pre-procedure without the surrogate's knowledge

- 22 Paragraph 23 applies where –
- (a) the surrogacy agreement mentioned in section 14(a) was entered into by two intended parents,
 - (b) both of the intended parents have died, and

- (c) one only of the deaths occurred otherwise than in the circumstances mentioned in paragraph 9.
- 23 Where this paragraph applies –
- (a) a relevant person may make an application, or continue an application, for an order under section 17(2) providing for the child to be treated in law as the child of the intended parent whose death occurred otherwise than in the circumstances mentioned in paragraph 9,
- (b) such an application is to be treated for the purposes of section 17 as having been made by that intended parent, and
- (c) section 18 has effect in relation to the application with the modifications set out in paragraph 24.
- 24 The modifications are that section 18 has effect as if –
- (a) where the application is made before the intended parent mentioned in paragraph 23(a) has died, in subsection (5), for “both of the application and of the making of the order” there were substituted “of the application”;
- (b) where the application is made after the intended parent mentioned in paragraph 23(a) has died, subsection (5) were omitted;
- (c) for subsection (6), there were substituted –
- “(6) At the time of the death of the intended parent in whose favour the order is to be made, that intended parent was domiciled or habitually resident in the United Kingdom or in the Channel Islands or the Isle of Man.”;
- (d) in subsection (10), references to the intended parent included a reference to the person making or continuing the application in reliance on paragraph 23.
- 25 Where the court makes an order under section 17 on the determination of an application made or continued by a person in reliance on paragraph 23, the court may also, on an application made by the person, make an order providing that the intended parent who died pre-procedure is to be treated as a parent of the child for the purpose of enabling that intended parent’s particulars to be entered as the particulars of the child’s parent in –
- (a) a register of live-births kept under the Births and Deaths Registration Act 1953, or
- (b) a register of births kept under the Registration of Births, Deaths and Marriages (Scotland) Act 1965.
- 26 The court may make an order under paragraph 25 only if the gametes of the intended parent who died pre-procedure were used in the creation of the embryo from which the child developed.
- 27 In paragraphs 25 and 26 references to the intended parent who died “pre-procedure” are references to the intended parent whose death occurred in the circumstances mentioned in paragraph 9.

- 28 A gamete is not a gamete of an intended parent for the purposes of paragraph 26 if the gamete does not contain any nuclear DNA of the intended parent.

Meaning of “relevant person”

- 29 In this Part of this Schedule “relevant person” means any of the following—
- (a) a person named as guardian of the child—
 - (i) by the intended parent in whose favour the application is being made or continued, and
 - (ii) in accordance with paragraph 30,
 - (b) the surrogate,
 - (c) a person who was in a close relationship with the intended parent in whose favour the application is being made or continued at the time of the intended parent’s death, or
 - (d) another relative or longstanding friend of that intended parent.
- 30 A person is named as guardian in accordance with this paragraph if the naming of the person as guardian would have been effective to appoint the person as guardian of the child—
- (a) for the purposes of section 5 of the Children Act 1989, had the intended parent been—
 - (i) at the time of naming the guardian, a parent with parental responsibility for the child, and
 - (ii) at the time of death, the only parent with parental responsibility for the child;
 - (b) for the purposes of section 7 of the Children (Scotland) Act 1995, had the intended parent been—
 - (i) at the time of naming the guardian, parent of the child, and
 - (ii) at the time of death, entitled to act as legal representative of the child.
- 31 For the purposes of paragraph 29(d) “relative” means child, parent, sibling, grandparent, grandchild, aunt, uncle, cousin, niece or nephew.

Order of priority of relevant persons

- 32 A person (“P1”) may not make or continue an application in reliance on paragraph 11, 20 or 23 if another person (“P2”) has already made or continued an application in reliance on the paragraph and—
- (a) P2’s application has been determined, or
 - (b) P2 falls within a sub-paragraph in paragraph 29 that is—
 - (i) the same sub-paragraph in paragraph 29 within which P1 falls, or
 - (ii) before the sub-paragraph in paragraph 29 within which P1 falls.

PART 3

ORDER UNDER SECTION 21 WHERE SURROGATE HAS DIED

Order under section 21 where surrogate has died

- 33 Paragraph 34 applies where the surrogate has died—
- (a) without having made an application under section 21 to be treated in law as the parent of the child, or
 - (b) after having made such an application but before the court has determined the application.
- 34 Where this paragraph applies—
- (a) a relevant person may make an application, or continue the surrogate’s application, under section 21 for the surrogate to be treated in law as the parent of the child,
 - (b) such an application is to be treated for the purposes of section 21 as having been made by the surrogate, and
 - (c) section 21 has effect in relation to the application with the modifications set out in paragraph 35.
- 35 The modifications are that section 21 has effect as if—
- (a) where the application is made before the surrogate’s death, in subsection (8), for “both of the application and of the making of the order” there were substituted “of the application”;
 - (b) where the application is made after the surrogate’s death, subsection (8) were omitted;
 - (c) in subsection (9), the reference to the surrogate included a reference to the person making or continuing the application in reliance on paragraph 34.

Meaning of “relevant person”

- 36 In paragraph 34 “relevant person” means any of the following—
- (a) a person named as guardian of the child—
 - (i) by the surrogate, and
 - (ii) in accordance with paragraph 37,
 - (b) a person who was in a close relationship with the surrogate at the time of the surrogate’s death, or
 - (c) another relative or longstanding friend of the surrogate.
- 37 A person is named as guardian in accordance with this paragraph if the naming of the person as guardian would have been effective to appoint the person as guardian of the child—
- (a) for the purposes of section 5 of the Children Act 1989, had the surrogate been—
 - (i) at the time of naming the guardian, a parent with parental responsibility for the child, and

- (ii) at the time of death, the only parent with parental responsibility for the child;
 - (b) for the purposes of section 7 of the Children (Scotland) Act 1995, had the surrogate been—
 - (i) at the time of naming the guardian, parent of the child, and
 - (ii) at the time of death, entitled to act as legal representative of the child.
- 38 For the purposes of paragraph 36(c) “relative” means child, parent, sibling, grandparent, grandchild, aunt, uncle, cousin, niece or nephew.

Order of priority

- 39 A person (“P1”) may not make or continue an application in reliance on paragraph 34 if another person (“P2”) has already made or continued an application in reliance on that paragraph and—
- (a) P2’s application has been determined, or
 - (b) P2 falls within a sub-paragraph in paragraph 36 that is—
 - (i) the same sub-paragraph in paragraph 36 within which P1 falls, or
 - (ii) before the sub-paragraph in paragraph 36 within which P1 falls.

SCHEDULE 2

Section 30

CONSEQUENTIAL AMENDMENTS RELATING TO PART 1

Family Law Reform Act 1987

- 1 In section 1(3) of the Family Law Reform Act 1987 (general principle), after paragraph (c) (but before the final “or”) insert—
- “(ca) has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023 (regulated surrogacy agreements);”.

Criminal Law (Consolidation) (Scotland) Act 1995

- 2 In section 1(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (offence of incest), at the end of the table set out in that subsection insert—

“4. Relationships by virtue of Part 1 of the Surrogacy Act 2023

A parent who is female

A parent who is male

Daughter

Son”

Human Fertilisation and Embryology Act 2008

- 3 The Human Fertilisation and Embryology Act 2008 is amended as follows.
- 4 In section 33(2) (meaning of “mother”) –
- (a) the words from “to the extent” to the end become paragraph (a);
 - (b) after that paragraph insert “, or
 - (b) who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023 (regulated surrogacy agreements).”
- 5 In section 38(4) (further provision relating to meaning of “father”) –
- (a) the words from “to the extent” to the end become paragraph (a);
 - (b) after that paragraph, insert –
 - “(b) if the child is treated as not being the man’s child by virtue of section 27 of the Surrogacy Act 2023, or
 - (c) if the child has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023 (regulated surrogacy agreements).”
- 6 In section 45(4) (further provision relating to cases where a woman is the other parent) –
- (a) the words from “to the extent” to the end become paragraph (a);
 - (b) after that paragraph, insert –
 - “(b) if the child is treated as not being the woman’s child by virtue of section 27 of the Surrogacy Act 2023, or
 - (c) if the child has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023 (regulated surrogacy agreements).”

SCHEDULE 3

Section 72

ENFORCEMENT PROVISIONS RELATING TO LICENSING REGIME IN CHAPTER 1 OF PART 4

Inspection of statutory records

- 1 (1) An authorised person may require a person to produce for inspection any records which the person is required to keep by virtue of Chapter 1 of Part 4.
- (2) Where the records are stored in an electronic form, the power under sub-paragraph (1) includes power to require the records to be made available for inspection –
- (a) in a visible and legible form, or
 - (b) in a form from which they can be readily produced in a visible and legible form.

- (3) An authorised person may inspect and take copies of any records produced for inspection in response to a requirement imposed under this paragraph.

Entry and search in connection with a suspected offence under section 71

- 2 (1) If a justice of the peace is satisfied on sworn information that there are reasonable grounds for believing –
 - (a) that an offence under section 71 has been committed,
 - (b) that there is material on premises which may be required for the purpose of being used in evidence in any proceedings for such an offence, and
 - (c) that any of the conditions in sub-paragraph (2) is met in relation to the premises,the justice of the peace may by signed warrant authorise an authorised person, together with any constables, to enter the premises, if need be by force, and search them.
- (2) The conditions are –
 - (a) that entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant under this paragraph has been given to the occupier;
 - (b) that the premises are unoccupied;
 - (c) that the occupier is temporarily absent;
 - (d) that an application for admission to the premises or the giving of notice of the intention to apply for a warrant under this paragraph would defeat the object of entry.
- (3) A warrant under this paragraph continues in force until the end of the period of 31 days beginning with the day on which it is issued.
- (4) In relation to Scotland –
 - (a) any reference in sub-paragraph (1) to a justice of the peace includes a reference to a sheriff, and
 - (b) the reference in that sub-paragraph to “on sworn information” is to be read as a reference to “by evidence on oath”.

Execution of warrants

- 3 (1) Entry and search under a warrant under paragraph 2 is unlawful if any of sub-paragraphs (2) to (4) and (6) is not complied with.
- (2) Entry and search must be at a reasonable time unless the person executing the warrant thinks that the purpose of the search may be frustrated on an entry at a reasonable time.
- (3) If the occupier of the premises to which the warrant relates is present when the person executing the warrant seeks to enter them, the person executing the warrant must –
 - (a) produce the warrant to the occupier, and
 - (b) give the occupier –

- (i) a copy of the warrant, and
 - (ii) an appropriate statement.
- (4) If the occupier of the premises to which the warrant relates is not present when the person executing the warrant seeks to enter them, but some other person is present who appears to the person executing the warrant to be in charge of the premises, the person executing the warrant must –
 - (a) produce the warrant to that other person,
 - (b) give that other person –
 - (i) a copy of the warrant, and
 - (ii) an appropriate statement, and
 - (c) leave a copy of the warrant in a prominent place on the premises.
- (5) In sub-paragraphs (3)(b)(ii) and (4)(b)(ii) “appropriate statement” means a statement in writing containing such information relating to the powers of the person executing the warrant and the rights and obligations of the person to whom the statement is given as may be specified in regulations made by the Secretary of State.
- (6) If the premises to which the warrant relates are unoccupied, the person executing the warrant must leave a copy of it in a prominent place on the premises.
- (7) Where the premises in relation to which a warrant under paragraph 2 is executed are unoccupied or the occupier is temporarily absent, the person executing the warrant must, when leaving the premises, leave them as effectively secured as the person found them.

Seizure in the course of search

- 4 (1) An authorised person entering or searching premises under a warrant under paragraph 2 may seize anything on the premises which the authorised person has reasonable grounds to believe may be required for the purpose of being used in evidence in any proceedings for an offence under section 71.
- (2) Where a person has power under sub-paragraph (1) to seize anything, that person may take such steps as appear to be necessary for preserving that thing or preventing interference with it.
- (3) The power under sub-paragraph (1) includes power to retain anything seized in exercise of the power for so long as it may be required for the purpose for which it was seized.
- (4) Where by virtue of sub-paragraph (1) a person (“P”) seizes anything, P must leave on the premises from which the thing was seized a statement giving particulars of what P has seized and stating that P has seized it.

Supplementary provision

- 5 Power to enter and search any premises under a warrant under paragraph 2 includes –

- (a) power to take such other persons and equipment as the person exercising the power reasonably considers necessary,
 - (b) power to inspect any equipment found on the premises,
 - (c) power to inspect and take copies of any records found on the premises, and
 - (d) power to require any person to afford such facilities and assistance with respect to matters under that person’s control as are necessary to enable the power of entry or search to be exercised.
- 6 (1) A person’s right to exercise a power under this Schedule is subject to production of evidence of the person’s entitlement to exercise it, if required.
- (2) As soon as reasonably practicable after having searched premises under a warrant under paragraph 2, the authorised person must—
- (a) prepare a written report of the search, and
 - (b) if requested to do so by the occupier of the premises, give the occupier a copy of the report.

Enforcement

- 7 (1) A person commits an offence if the person—
- (a) fails without reasonable excuse to comply with a requirement under paragraph 1(1) or 5(d), or
 - (b) intentionally obstructs the exercise of any right under this Schedule.
- (2) A person guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland, to a fine not exceeding level 5 on the standard scale.

Interpretation

- 8 In this Schedule “authorised person”, in relation to any provision, means a person authorised by the HFEA to act for the purposes of that provision.

SCHEDULE 4

Section 74

CONSEQUENTIAL AMENDMENTS RELATING TO CHAPTER 1 OF PART 4

- 1 The Human Fertilisation and Embryology Act 1990 is amended as follows.
- 2 In section 2(1) (interpretation)—
- (a) in the definition of “licence”, after “means” insert “(except in the expression “licence under section 52 of the Surrogacy Act 2023”)”;

- (b) after the definition of “licence” insert—
- ““licensable surrogacy-related activity” has the same meaning as in Chapter 1 of Part 4 of the Surrogacy Act 2023 (see section 51 of that Act);”
- (c) after the definition of “nuclear DNA” insert—
- ““person to whom a licence under section 52 of the Surrogacy Act 2023 applies” has the same meaning as that given to the expression “person to whom a licence applies” in Chapter 1 of Part 4 of the Surrogacy Act 2023 (see section 54(2) of that Act);”.
- 3 (1) Section 8 (general functions of the Authority) is amended as follows.
- (2) In subsection (1)—
- (a) after paragraph (a) insert—
- “(aa) keep under review information about the carrying on of licensable surrogacy-related activity under licences granted under section 52 of the Surrogacy Act 2023 and advise the Secretary of State, if the Secretary of State asks it to do so, about the carrying on of that activity;”;
- (b) after paragraph (c) insert—
- “(cza) provide, to such extent as it considers appropriate, advice and information for—
- (i) any person to whom a licence under section 52 of the Surrogacy Act 2023 applies, or
- (ii) persons who have entered into, or may wish to enter into, a surrogacy agreement within the meaning of section 2 of the Surrogacy Act 2023;”;
- (c) in paragraph (ca)—
- (i) omit “and” at the end of sub-paragraph (i), and
- (ii) after sub-paragraph (i) insert—
- “(ia) in the carrying on of licensable surrogacy-related activity, and”;
- (d) omit “and” at the end of paragraph (cb);
- (e) after paragraph (cb) insert—
- “(cc) promote, in relation to licensable surrogacy-related activity, compliance with—
- (i) requirements imposed by or under the Surrogacy Act 2023, and
- (ii) the code of practice under section 67 of that Act, and”.
- (3) In subsection (2), after “(1)(c)” insert “or (cza)”.

- 4 In section 8C(2) (exclusion of functions from power to contract out), after paragraph (a) insert –
- “(aa) it relates to the grant, revocation or variation of any licence under section 52 of the Surrogacy Act 2023,”.
- 5 In section 9A(3) (power to delegate and establish committees), after “20A” insert “of this Act or section 62 of the Surrogacy Act 2023”.
- 6 In section 11 (licences for treatment, storage and research) –
- (a) in subsection (1), in the opening words, after “may” insert “under this Act”;
- (b) after subsection (2) insert –
- “(3) See also section 52 of the Surrogacy Act 2023 (Authority’s power to grant licences under that Act in relation to licensable surrogacy-related activity).”
- 7 In paragraph 4 of Schedule 1 (members of the Authority) –
- (a) in sub-paragraph (3) –
- (i) omit “and” at the end of paragraph (b);
- (ii) at the of paragraph (c) insert “and
- (d) any person who is, or has been, a person to whom a licence under section 52 of the Surrogacy Act 2023 applies.”;
- (b) in sub-paragraph (4) –
- (i) for “or (c)”, substitute “, (c) or (d)”;
- (ii) for “and (b)”, substitute “, (b) and (d)”.
- 8 In paragraph 10 of Schedule 1 (avoidance of conflict of interest) –
- (a) in sub-paragraph (1), after “licence” insert “under this Act or under section 52 of the Surrogacy Act 2023”;
- (b) in sub-paragraph (3), after “licence” insert “under this Act or, as the case may be, under section 52 of the Surrogacy Act 2023”.

SCHEDULE 5

Section 106

REGISTRATION OF BIRTH (ENGLAND AND WALES)

PART 1

OPTION ONE

Amendments of the Births and Deaths Registration Act 1953

- 1 The Births and Deaths Registration Act 1953 is amended as follows.

- 2 In section 9 (giving of information to person other than registrar), after subsection (4A) insert—
- “(4B) The documents required to be produced by section 10ZB(2) may be—
- (a) produced to the officer in whose presence a declaration under subsection (1) is made, and
 - (b) sent by that officer with the declaration to the registrar.”
- 3 In section 10 (registration of father or of second female parent where parents not married or civil partners), after subsection (1A) insert—
- “(1AA) Subsection (1) does not apply in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.”
- 4 After section 10ZA insert—
- “10ZB Registration of person who is parent of child born under regulated surrogacy agreement**
- (1) This section applies in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.
 - (2) The registrar is not to enter in the register the name of any person as parent of the child except on the production of—
 - (a) a copy of the regulated surrogacy statement mentioned in section 4(4) of that Act, and
 - (b) a declaration in the prescribed form which—
 - (i) states that, before the birth of the child, the surrogate did not withdraw her consent to section 4(1) of the Surrogacy Act 2023 applying in relation to the surrogacy agreement, and
 - (ii) is made by the parent or, where the child has two parents by virtue of section 4(1) of the Surrogacy Act 2023, either of the parents.
 - (3) Where the person giving information concerning the birth is the surrogate who carried the child, subsection (2) has effect as if paragraph (b) were omitted.
 - (4) Where the name of a person who is a parent of the child by virtue of section 4(1) of the Surrogacy Act 2023 is entered as a parent of the child, the entry in the register relating to the child is to be marked in such manner and with such words as may be prescribed.”
- 5 In section 10A (re-registration where parents neither married nor civil partners), after subsection (2) insert—
- “(3) This section does not apply in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.”
- 6 (1) Section 29 (correction of errors in registers) is amended as follows.

- (2) After subsection (3) insert—
- “(3ZA) Subsection (3ZB) applies where, in an entry in a register of live-births relating to a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023—
- (a) the name of any such parent has not been entered as parent of the child, or
 - (b) the mark mentioned in section 10ZB(4) has not been made.
- (3ZB) The name of the parent, or the mark, may be added by entry in the margin (without alteration of any original entry) by the officer having the custody of the register if the person requesting the addition produces to the officer—
- (a) a statutory declaration explaining the true facts of the case made by two qualified informants of the birth, and
 - (b) the prescribed documents.
- (3ZC) The statutory declaration mentioned in subsection (3ZB)(a) may be made—
- (a) in default of two qualified informants, by one qualified informant of the birth to which the entry relates, and
 - (b) in default of any qualified informant, by one credible person having knowledge of the true facts of the case.”

(3) In the heading, after “errors” insert “or omissions”.

7 (1) Section 41(1) (interpretation) is amended as follows.

 - (2) In the definition of “father”, after “natural father”, insert “(and, in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023, see section 12 of that Act (interpretation of references to mother or father))”.
 - (3) In the definition of “mother”, after “natural mother”, insert “(and, in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023, see section 12 of that Act (interpretation of references to mother or father))”.

Amendments of uncommenced provision about birth registration

- 8 The Births and Deaths Registration Act 1953, as amended by Schedule 6 to the Welfare Reform Act 2009 and paragraphs 1 to 7 of this Schedule, is amended as follows.
- 9 In section 1 (particulars of births to be registered), after subsection (2), insert—
- “(2A) In the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023—
- (a) this section has effect as if—
 - (i) in subsection (2)(a), after “mother”, there were inserted “and father”;

- (ii) subsections (2)(aa) and (3) were omitted, and
 (b) sections 2A to 2E do not apply.”
- 10 In section 2 (information concerning birth to be given to registrar), after subsection (2) insert—
- “(3) In the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023, subsection (1) has effect as if the words from “of a child” to “child’s birth” were omitted.”
- 11 In section 10B (re-registration after sole registration: information provided by other parent and confirmed by mother), after subsection (6) insert—
- “(6A) This section does not apply in the case of the registration of the birth of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.”
- 12 In section 10C (re-registration after sole registration: information provided by mother and confirmed by other parent), after subsection (6) insert—
- “(6A) This section does not apply in the case of the registration of the birth of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.”

PART 2

OPTION TWO

Amendments of the Births and Deaths Registration Act 1953

- 13 The Births and Deaths Registration Act 1953 is amended as follows.
- 14 In section 1 (particulars of birth to be registered), after subsection (2) insert—
- “(2A) In the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023, subsection (2) has effect as if, after paragraph (a), there were inserted—
- “(aa) the surrogate who carried the child;”.
- (2B) Regulations under subsection (1) prescribing the particulars that are to be entered in a register concerning the birth of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023 may require that—
- (a) the name of the surrogate who carried the child be entered in the register as the mother of the child, and
- (b) the name of a person who would have been the father of the child but for section 4(1) or 27(2) of that Act be entered in the register as the father of the child.”

- 15 In section 2 (information concerning birth to be given to registrar), after subsection (1) insert—
- “(1A) In the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023, subsection (1) has effect as if—
- (a) in paragraph (a), after “child”, there were inserted “and the surrogate who carried the child”;
 - (b) in paragraph (b), for “and mother”, there were substituted “, mother and surrogate”.
- 16 In section 9 (giving of information to person other than registrar), after subsection (4A) insert—
- “(4B) The documents required to be produced by section 10ZB(2) may be—
- (a) produced to the officer in whose presence a declaration under subsection (1) is made, and
 - (b) sent by that officer with the declaration to the registrar.”
- 17 In section 10 (registration of father or of second female parent where parents not married or civil partners), after subsection (1A) insert—
- “(1AA) Subsection (1) does not apply in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.”
- 18 After section 10ZA insert—
- “10ZB Registration of child born under regulated surrogacy agreement**
- (1) This section applies in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.
 - (2) The registrar is not to enter in the register the name of any person as parent of the child except on the production of—
 - (a) a copy of the regulated surrogacy statement mentioned in section 4(4) of that Act, and
 - (b) a declaration in the prescribed form which—
 - (i) states that, before the birth of the child, the surrogate did not withdraw her consent to section 4(1) applying in relation to the surrogacy agreement, and
 - (ii) is made by the parent, or one of the parents, of the child.
 - (3) Where the person giving information concerning the birth is the surrogate who carried the child, subsection (2) has effect as if paragraph (b) were omitted.”
- 19 In section 10A (re-registration where parents neither married nor civil partners), after subsection (2) insert—
- “(3) This section does not apply in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.”

20 After section 14A insert—

“14B Registration of person who is parent of child born under a surrogacy agreement

The Minister may by regulations make provision about the registration of a person who is a parent of a child by virtue of section 4(1) of the Surrogacy Act 2023.”

21 (1) Section 39A (regulations made by the Minister: further provision) is amended as follows.

(2) After subsection (3) insert—

“(3A) A statutory instrument containing (whether alone or with other provision) regulations made by the Minister under section 14B may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

(3) In subsection (4), for “A statutory instrument”, substitute “Any other statutory instrument”.

(4) In subsection (5), after “10C,” insert “14B,”.

22 (1) Section 41(1) (interpretation) is amended as follows.

(2) In the definition of “father”, after “natural father”, insert “(and, in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023, see section 12 of that Act (interpretation of references to mother or father))”.

(3) In the definition of “mother”, after “natural mother”, insert “(and, in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023, see section 12 of that Act (interpretation of references to mother or father))”.

Amendments of uncommenced provision about birth registration

23 The Births and Deaths Registration Act 1953, as amended by Schedule 6 to the Welfare Reform Act 2009 and paragraphs 13 to 22 of this Schedule, is amended as follows.

24 In section 1 (persons qualified to give information concerning a birth), in subsection (2A) (as inserted by paragraph 14 of this Schedule), for the words from “, subsection (2) has effect” to the end, substitute “—

(a) this section has effect as if—

(i) in subsection (2), for paragraphs (a) and (aa) there were substituted—

“(a) the mother and father of the child;

(aa) the surrogate who carried the child;”

(ii) subsection (3) were omitted;

(b) sections 2A to 2E do not apply.”

- 25 In section 2 (information concerning birth to be given to registrar), in subsection (1A) (as inserted by paragraph 15 of this Schedule), before paragraph (a) insert –
- “(za) the words from “of a child” to “at the time of the child’s birth” were omitted;”.
- 26 In section 10B (re-registration after sole registration: information provided by other parent and confirmed by mother), after subsection (6) insert –
- “(6A) This section does not apply in the case of the registration of the birth of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.”
- 27 In section 10C (re-registration after sole registration: information provided by mother and confirmed by other parent), after subsection (6) insert –
- “(6A) This section does not apply in the case of the registration of the birth of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.”

SCHEDULE 6

Section 107

REGISTRATION OF BIRTH (SCOTLAND)

PART 1

OPTION ONE

Amendments of the Registration of Births, Deaths and Marriages (Scotland) Act 1965

- 1 The Registration of Births, Deaths and Marriages (Scotland) Act 1965 is amended as follows.
- 2 In section 14 (duty to give information of particulars of birth), after subsection (5) insert –
- “(6) Subsection (5) does not apply in the case of a child who has two parents by virtue of section 4(1) of the Surrogacy Act 2023.”
- 3 In section 18 (births of children born out of wedlock), after subsection (1A) insert –
- “(1B) Subsection (1) does not apply in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.”
- 4 After section 18B insert –
- “18C Registration of person who is parent of child born under regulated surrogacy agreement**
- (1) This section applies in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.

- (2) The district registrar is not to enter in the register of births the name of any person as parent of the child except on the production of—
 - (a) a copy of the regulated surrogacy statement mentioned in section 4(4) of that Act, and
 - (b) a declaration in the prescribed form which—
 - (i) states that, before the birth of the child, the surrogate did not withdraw her consent to section 4(1) of the Surrogacy Act 2023 applying in relation to the surrogacy agreement, and
 - (ii) is made by the parent or, where the child has two parents by virtue of section 4(1) of the Surrogacy Act 2023, either of the parents.
- (3) Where the person giving information concerning the birth is the surrogate who carried the child, subsection (2) has effect as if paragraph (b) were omitted.
- (4) Where the name of a person who is a parent of the child by virtue of section 4(1) of the Surrogacy Act 2023 is entered as a parent of the child, the entry in the register of births relating to the child is to be marked in such manner and with such words as may be prescribed.

18D Correction of omission in register in relation to child born under regulated surrogacy agreement

- (1) This section applies where, in an entry in a register of births relating to a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023—
 - (a) the name of any such parent has not been entered as a parent of the child, or
 - (b) the mark mentioned in section 18C(4) has not been made.
- (2) The name of the parent, or the mark, may be added by entry in the margin (without alteration of any original entry) by the district registrar if the person requesting the addition produces to the registrar—
 - (a) a statutory declaration explaining the true facts of the case made by two qualified informants of the birth, and
 - (b) the prescribed documents.
- (3) The statutory declaration mentioned in subsection (2)(a) may be made—
 - (a) in default of two qualified informants, by one qualified informant of the birth to which the entry relates, and
 - (b) in default of any qualified informant, by one credible person having knowledge of the true facts of the case.”

- 5 In section 20 (re-registration in certain cases), after subsection (1B) insert—
- “(1C) Paragraph (c) of subsection (1) does not apply in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.”

PART 2

OPTION TWO

Amendments of the Registration of Births, Deaths and Marriages (Scotland) Act 1965

- 6 The Registration of Births, Deaths and Marriages (Scotland) Act 1965 is amended as follows.
- 7 In section 13 (particulars of births to be registered), after subsection (4) insert—
- “(5) Regulations under section 54 prescribing the particulars that are to be entered in a register of births concerning the birth of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023 may require that—
- (a) the name of the surrogate who carried the child be entered in the register as the mother of the child, and
 - (b) the name of a person who would have been the father of the child but for section 4(1) or 27(2) of that Act be entered in the register as the father of the child.”
- 8 In section 14 (duty to give information of particulars of birth)—
- (a) after subsection (4) insert—
 - “(4ZA) In the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023—
 - (a) subsection (1) has effect as if—
 - (i) in paragraph (a), after “years)”, there were inserted “and the surrogate who carried the child”;
 - (ii) in paragraph (b), after “mother”, there were inserted “and surrogate”;
 - (b) subsection (2) has effect as if, after “mother”, there were inserted “and surrogate”.”;
 - (b) after subsection (5) insert—
 - “(6) Subsection (5) does not apply in the case of a child who has two parents by virtue of section 4(1) of the Surrogacy Act 2023.”
- 9 In section 18 (births of children born out of wedlock), after subsection (1A) insert—
- “(1B) Subsection (1) does not apply in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.”

10 After section 18B insert –

“18C Registration of child born under surrogacy agreement

- (1) This section applies in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.
- (2) The district registrar is not to enter in the register the name of any person as parent of the child except on the production of –
 - (a) a copy of the regulated surrogacy statement mentioned in section 4(4) of that Act, and
 - (b) a declaration in the prescribed form which –
 - (i) states that, before the birth of the child, the surrogate did not withdraw her consent to section 4(1) of the Surrogacy Act 2023 applying in relation to the surrogacy agreement, and
 - (ii) is made by the parent, or one of the parents, of the child.
- (3) Where the person giving information concerning the birth is the surrogate who carried the child, subsection (2) has effect as if paragraph (b) were omitted.”

11 In section 20 (re-registration in certain cases), after subsection (1B) insert –

“(1C) Paragraph (c) of subsection (1) does not apply in the case of a child who has a parent or parents by virtue of section 4(1) of the Surrogacy Act 2023.”

12 After section 21 insert –

“21ZA Registration of person who is parent of child born under a surrogacy agreement

- (1) The Secretary of State may by regulations make provision about the registration of a person who is a parent of a child by virtue of section 4(1) of the Surrogacy Act 2023.
- (2) Regulations under subsection (1) may –
 - (a) make different provision for different cases or areas,
 - (b) provide for exemptions from any of the provisions of the regulations, and
 - (c) contain such consequential, incidental, supplemental and transitional provision as the Secretary of State considers appropriate.
- (3) Before making regulations under subsection (1) the Secretary of State must consult the Registrar General.
- (4) The power to make regulations under subsection (1) is exercisable by statutory instrument.

- (5) A statutory instrument containing (whether alone or with other provision) regulations made by the Secretary of State under subsection (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

SCHEDULE 7

Section 112

STATUTORY RIGHTS TO TIME OFF WORK, LEAVE, PAY AND ALLOWANCE

Statutory rights to time off work to accompany surrogate to ante-natal appointment

- 1 The Employment Rights Act 1996 is amended as follows.
- 2 In section 47C (right not to be subject to detriment: leave for family and domestic reasons)–
- (a) in subsection (2), after paragraph (ab) insert–
 - “(ac) time off under section 57ZT or 57ZV;”;
 - (b) in subsection (5)–
 - (i) omit the “or” at the end of paragraph (c);
 - (ii) after paragraph (d) insert–
 - “(e) being a person entitled to–
 - (i) time off under section 57ZZ, and
 - (ii) remuneration under section 57ZZ(3) in respect of that time off,
 - the agency worker exercised (or proposed to exercise) that right or received (or sought to receive) that remuneration, or
 - (f) being a person entitled to time off under section 57ZZ2, the agency worker exercised (or proposed to exercise) that right.”
- 3 In section 57ZE (right to time off to accompany to ante-natal appointment)–
- (a) in subsection (7)–
 - (i) insert “or” at the end of paragraph (c);
 - (ii) omit paragraphs (e) and (f);
 - (b) omit subsections (10) and (10A).
- 4 In section 57ZG (right to time off to accompany to ante-natal appointment: agency workers)–
- (a) in subsection (7)–
 - (i) insert “or” at the end of paragraph (c);
 - (ii) omit paragraphs (e) and (f);
 - (b) omit subsections (10) and (10A).

5 After section 57ZS insert—

“Surrogacy agreements: right to time off to accompany surrogate to ante-natal appointment

57ZT Surrogacy agreements: right to paid time off to accompany surrogate to ante-natal appointment

- (1) An employee who—
 - (a) is the only intended parent under a surrogacy agreement, and
 - (b) meets Condition A or B in relation to a child being carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement,is entitled under this subsection to be permitted by the employee’s employer to take time off during the employee’s working hours in order that the employee may accompany the surrogate when the surrogate attends by appointment at any place for the purpose of receiving ante-natal care.
- (2) An employee who—
 - (a) is one of two intended parents under a surrogacy agreement,
 - (b) meets Condition A or C in relation to a child being carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement, and
 - (c) has elected to exercise the right to take time off under this subsection in connection with the surrogate’s pregnancy,is entitled under this subsection to be permitted by the employee’s employer to take time off during the employee’s working hours in order that the employee may accompany the surrogate when the surrogate attends by appointment at any place for the purpose of receiving ante-natal care.
- (3) An employee who is permitted to take time off under subsection (1) or (2) is entitled to be paid remuneration by the employee’s employer for the number of working hours for which the employee is entitled to be absent at the appropriate hourly rate (see section 57ZU).
- (4) An employee may not make an election for the purposes of subsection (2)(c) if—
 - (a) the employee has made an election for the purposes of section 57ZV(1)(c) in connection with the surrogate’s pregnancy, or
 - (b) the other intended parent under the surrogacy agreement has made an election for the purposes of subsection (2)(c) or section 57ZZ(2)(c) in connection with the pregnancy.

- (5) An employee meets Condition A in relation to a child being carried by the surrogate if the employee expects to be the parent, or one of the parents, of the child by virtue of section 4(1) of the Surrogacy Act 2023.
- (6) An employee meets Condition B in relation to a child being carried by the surrogate if –
 - (a) the employee intends to apply for an order under section 15 of the Surrogacy Act 2023 providing that the child is to be treated in law as the child of the employee,
 - (b) the employee intends to make the application within the period of 6 months beginning with the day of the child’s birth, and
 - (c) the employee expects the conditions in section 16(2), (4), (5) and (10) of the Surrogacy Act 2023 to be met as regards the intended application.
- (7) An employee (“X”) meets Condition C in relation to a child being carried by the surrogate if –
 - (a) X intends to apply (whether alone or with the other intended parent under the agreement (“Y”)) for an order under section 17 of the Surrogacy Act 2023 providing that the child is to be treated in law as the child of X (whether or not also as the child of Y),
 - (b) X intends to make the application within the period of 6 months beginning with the day of the child’s birth, and
 - (c) X expects the conditions in section 18(2), (3), (5), (6) and (11) of the Surrogacy Act 2023 to be met as regards the intended application.
- (8) In relation to any particular pregnancy, an employee is not entitled to take time off under this section on more than five occasions.
- (9) See section 57ZW for restrictions in relation to the right to take time off under this section.

57ZU Remuneration for time off under section 57ZT

- (1) The “appropriate hourly rate”, in relation to an employee, is the amount of one week’s pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.
- (2) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week’s pay is to be divided instead by –
 - (a) the average number of normal working hours calculated by dividing by twelve the total number of the employee’s

- normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or
- (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in subsection (3) as are appropriate in the circumstances.
- (3) The considerations referred to in subsection (2)(b) are –
- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of the employee’s contract, and
 - (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.
- (4) A right to any amount under section 57ZT(3) does not affect any right of an employee in relation to remuneration under the employee’s contract of employment (“contractual remuneration”).
- (5) Any contractual remuneration paid to an employee in respect of a period of time off under section 57ZT goes towards discharging any liability of the employer to pay remuneration under subsection (3) of that section in respect of that period.
- (6) Any payment of remuneration under section 57ZT(3) in respect of a period of time off under section 57ZT goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

57ZV Surrogacy agreements: right to unpaid time off to accompany surrogate to ante-natal appointment

- (1) An employee who –
- (a) is one of two intended parents under a surrogacy agreement,
 - (b) meets Condition A or C in relation to a child being carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement, and
 - (c) has elected to exercise the right to take time off under this subsection in connection with the surrogate’s pregnancy,
- is entitled under this subsection to be permitted by the employee’s employer to take time off during the employee’s working hours in order that the employee may accompany the surrogate when the surrogate attends by appointment at any place for the purpose of receiving ante-natal care.

- (2) For the purposes of subsection (1), Conditions A and C have the same meaning as in section 57ZT.
- (3) An employee may not make an election for the purposes of subsection (1)(c) if—
 - (a) the employee has made an election for the purposes of section 57ZT(2)(c) in connection with the surrogate’s pregnancy, or
 - (b) the other intended parent has made an election for the purposes of subsection (1)(c) or section 57ZZ2(1)(c) in connection with the pregnancy.
- (4) In relation to any particular pregnancy, an employee is not entitled to take time off under this section on more than two occasions.
- (5) See section 57ZW for restrictions in relation to the right to take time off under this section.

57ZW Restrictions on right to time off under section 57ZT or 57ZV

- (1) On each occasion on which time off is taken under section 57ZT or 57ZV, the maximum time off during working hours to which the employee is entitled is six and a half hours.
- (2) An employee is not entitled to take time off under section 57ZT or 57ZV unless the appointment mentioned in section 57ZT(1) or (2) or 57ZV(1) is made on the advice of a registered medical practitioner, registered midwife or registered nurse.
- (3) An employee is not entitled to take time off under section 57ZT(1) unless, if the employer requests it, the employee gives the employer a declaration signed by the employee that states—
 - (a) that the employee is an intended parent under a surrogacy agreement and meets Condition A or B (within the meaning of section 57ZT) in relation to a child being carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement,
 - (b) that the employee’s purpose in taking time off is the purpose specified in section 57ZT(1),
 - (c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered nurse, and
 - (d) the date and time of the appointment.
- (4) An employee is not entitled to take time off under section 57ZT(2) or 57ZV(1) unless, if the employer requests it, the employee gives the employer a declaration signed by the employee that states—
 - (a) that the employee is an intended parent under a surrogacy agreement and meets Condition A or C (within the meaning of section 57ZT) in relation to a child being carried by the

- surrogate as a result of an assisted reproduction procedure carried out under the agreement,
- (b) that the employee's purpose in taking time off is the purpose specified in section 57ZT(2) or 57ZV(1),
 - (c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered nurse,
 - (d) the date and time of the appointment, and
 - (e) that the employee has made an election for the purposes of section 57ZT(2) or 57ZV(1) in connection with the pregnancy.
- (5) A declaration requested under subsection (3) or (4) may be given in electronic form.
- (6) The references in this section to a registered nurse are to a registered nurse –
- (a) who is also registered in the Specialist Community Public Health Nurses Part of the register maintained under article 5 of the Nursing and Midwifery Order 2001 (S.I. 2002/253), and
 - (b) whose entry in that Part of the register is annotated to show that the nurse holds a qualification in health visiting.

57ZX Complaint to employment tribunal

- (1) An employee may present a complaint to an employment tribunal that the employer –
- (a) has unreasonably refused to let the employee take time off as required by section 57ZT or 57ZV, or
 - (b) has failed to pay the whole or any part of any amount to which the employee is entitled under section 57ZT(3).
- (2) An employment tribunal may not consider a complaint under this section unless it is presented –
- (a) before the end of the period of three months beginning with the day of the appointment in question, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (3) Section 207B applies for the purposes of subsection (2)(a).
- (4) Where an employment tribunal finds a complaint under subsection (1) well-founded, it must make a declaration to that effect.
- (5) If the complaint is that the employer has unreasonably refused to let the employee take time off as required by section 57ZT(1) or (2), the tribunal must also order the employer to pay to the employee

an amount that is twice the amount of the remuneration to which the employee would have been entitled under section 57ZT(3) if the employer had not refused.

- (6) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which the employee is entitled under section 57ZT(3), the tribunal must also order the employer to pay to the employee the amount which it finds due to the employee.
- (7) If the complaint is that the employer has unreasonably refused to let the employee take time off as required by section 57ZV, the tribunal must also order the employer to pay to the employee an amount determined in accordance with subsection (8).
- (8) The amount payable to the employee is –

$$A \times B \times 2$$

where –

- (a) A is the appropriate hourly rate for the employee determined in accordance with section 57ZU(1) to (3), and
- (b) B is the number of working hours for which the employee would have been entitled under section 57ZV to be absent if the time off had not been refused.

57ZY Interpretation

- (1) This section applies for the purposes of sections 57ZT to 57ZX.
- (2) The working hours of an employee are to be taken to be any time when, in accordance with the employee’s contract of employment, the employee is required to be at work.
- (3) The following terms have the same meaning as in the Surrogacy Act 2023 (see section 2 of that Act) –
 - “assisted reproduction procedure”;
 - “intended parent”;
 - “intended parents”;
 - “surrogacy agreement”;
 - “surrogate”.

Surrogacy agreements: right to time off to accompany surrogate to ante-natal appointment (agency workers)

57ZZ Surrogacy agreements: right to paid time off to accompany surrogate to ante-natal appointment (agency workers)

- (1) An agency worker who –

- (a) is the only intended parent under a surrogacy agreement, and
- (b) meets Condition A or B in relation to a child being carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement,

is entitled under this subsection to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that the agency worker may accompany the surrogate when the surrogate attends by appointment at any place for the purpose of receiving ante-natal care.

- (2) An agency worker who—
 - (a) is one of two intended parents under a surrogacy agreement,
 - (b) meets Condition A or C in relation to a child being carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement, and
 - (c) has elected to exercise the right to take time off under this subsection in connection with the surrogate's pregnancy,is entitled under this subsection to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that the agency worker may accompany the surrogate when the surrogate attends by appointment at any place for the purpose of receiving ante-natal care.
- (3) An agency worker who is permitted to take time off under subsection (1) or (2) is entitled to be paid remuneration by the temporary work agency for the number of working hours for which the agency worker is entitled to be absent at the appropriate hourly rate (see section 57ZZ1).
- (4) An agency worker may not make an election for the purposes of subsection (2)(c) if—
 - (a) the agency worker has made an election for the purposes of section 57ZZ2(1)(c) in connection with the surrogate's pregnancy, or
 - (b) the other intended parent under the surrogacy agreement has made an election for the purposes of subsection (2)(c) or section 57ZT(2)(c) in connection with the pregnancy.
- (5) An agency worker meets Condition A in relation to a child being carried by the surrogate if the agency worker expects to be the parent, or one of the parents, of the child by virtue of section 4(1) of the Surrogacy Act 2023.
- (6) An agency worker meets Condition B in relation to a child being carried by the surrogate if—
 - (a) the agency worker intends to apply for an order under section 15 of the Surrogacy Act 2023 providing that the child is to be treated in law as the child of the agency worker,

- (b) the agency worker intends to make the application within the period of 6 months beginning with the day of the child's birth, and
 - (c) the agency worker expects the conditions in section 16(2), (4), (5) and (10) of the Surrogacy Act 2023 to be met as regards the intended application.
- (7) An agency worker ("X") meets Condition C in relation to a child being carried by the surrogate if –
 - (a) X intends to apply (whether alone or with the other intended parent under the agreement ("Y")) for an order under section 17 of the Surrogacy Act 2023 providing that the child is to be treated in law as the child of X (whether or not also as the child of Y),
 - (b) X intends to make the application within the period of 6 months beginning with the day of the child's birth, and
 - (c) X expects the conditions in section 18(2), (3), (5), (6) and (11) of the Surrogacy Act 2023 to be met as regards the intended application.
- (8) In relation to any particular pregnancy, an agency worker is not entitled to take time off under this section on more than five occasions.
- (9) See section 57ZZ3 for restrictions in relation to the right to take time off under this section.

57ZZ1 Remuneration for time off under section 57ZZ

- (1) The "appropriate hourly rate", in relation to an agency worker, is the amount of one week's pay divided by the number of normal working hours in a week for that agency worker in accordance with the terms, in force on the day when the time off is taken, under which the agency worker works temporarily for and under the supervision and direction of the hirer.
- (2) But where the number of normal working hours during the assignment differs from week to week or over a longer period, the amount of one week's pay is to be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the agency worker's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken.
- (3) A right to any amount under section 57ZZ(3) does not affect any right of an agency worker in relation to remuneration under the agency worker's contract with the temporary work agency ("contractual remuneration").

- (4) Any contractual remuneration paid to an agency worker in respect of a period of time off under section 57ZZ goes towards discharging any liability of the temporary work agency to pay remuneration under subsection (3) of that section in respect of that period.
- (5) Any payment of remuneration under section 57ZZ(3) in respect of a period of time off under section 57ZZ goes towards discharging any liability of the temporary work agency to pay contractual remuneration in respect of that period.

57ZZ2 Surrogacy agreements: right to unpaid time off to accompany surrogate to ante-natal appointment (agency workers)

- (1) An agency worker who—
 - (a) is one of two intended parents under a surrogacy agreement,
 - (b) meets Condition A or C in relation to a child being carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement, and
 - (c) has elected to exercise the right to take time off under this subsection in connection with the surrogate's pregnancy,is entitled under this subsection to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that the agency worker may accompany the surrogate when the surrogate attends by appointment at any place for the purpose of receiving ante-natal care.
- (2) For the purposes of subsection (1), Conditions A and C have the same meaning as in section 57ZZ.
- (3) An agency worker may not make an election for the purposes of subsection (1)(c) if—
 - (a) the agency worker has made an election for the purposes of section 57ZZ(2)(c) in connection with the surrogate's pregnancy, or
 - (b) the other intended parent has made an election for the purposes of subsection (1)(c) or section 57ZV(1)(c) in connection with the pregnancy.
- (4) In relation to any particular pregnancy, an agency worker is not entitled to take time off under this section on more than two occasions.
- (5) See section 57ZZ3 for restrictions in relation to the right to take time off under this section.

57ZZ3 Restrictions on right to time off under section 57ZZ or 57ZZ2

- (1) On each occasion on which time off is taken under section 57ZZ or 57ZZ2, the maximum time off during working hours to which the agency worker is entitled is six and a half hours.

- (2) An agency worker is not entitled to take time off under section 57ZZ or 57ZZ2, unless the appointment mentioned in section 57ZZ(1) or (2) or 57ZZ2(1) is made on the advice of a registered medical practitioner, registered midwife or registered nurse.
- (3) An agency worker is not entitled to take time off under section 57ZZ(1) unless, if the temporary work agency or hirer requests it, the agency worker gives that person a declaration signed by the agency worker that states –
 - (a) that the agency worker is an intended parent under a surrogacy agreement and meets Condition A or B (within the meaning of section 57ZZ) in relation to a child being carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement,
 - (b) that the agency worker’s purpose in taking time off is the purpose specified in section 57ZZ(1),
 - (c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered nurse, and
 - (d) the date and time of the appointment.
- (4) An agency worker is not entitled to take time off under section 57ZZ(2) or 57ZZ2(1) unless, if the temporary work agency or hirer requests it, the agency worker gives that person a declaration signed by the agency worker that states –
 - (a) that the agency worker is an intended parent under a surrogacy agreement and meets Condition A or C (within the meaning of section 57ZZ) in relation to a child being carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement,
 - (b) that the agency worker’s purpose in taking time off is the purpose specified in section 57ZZ(2) or 57ZZ2(1),
 - (c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered nurse,
 - (d) the date and time of the appointment, and
 - (e) that the agency worker has made an election for the purposes of section 57ZZ(2) or 57ZZ2(1) in connection with the surrogate’s pregnancy.
- (5) A declaration requested under subsection (3) or (4) may be given in electronic form.
- (6) The references in this section to a registered nurse are to a registered nurse –
 - (a) who is also registered in the Specialist Community Public Health Nurses Part of the register maintained under article 5 of the Nursing and Midwifery Order 2001 (S.I. 2002/253), and

- (b) whose entry in that Part of the register is annotated to show that the nurse holds a qualification in health visiting.

57ZZ4 Complaint to employment tribunal (agency workers)

- (1) An agency worker may present a complaint to an employment tribunal that the temporary work agency –
 - (a) has unreasonably refused to let the agency worker take time off as required by section 57ZZ or 57ZZ2, or
 - (b) has failed to pay the whole or any part of any amount to which the agency worker is entitled under section 57ZZ(3).
- (2) An agency worker may present a complaint to an employment tribunal that the hirer has unreasonably refused to let the agency worker take time off as required by section 57ZZ or 57ZZ2.
- (3) An employment tribunal may not consider a complaint under subsection (1) or (2) unless it is presented –
 - (a) before the end of the period of three months beginning with the day of the appointment in question, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (4) Section 207B applies for the purposes of subsection (3)(a).
- (5) Where an employment tribunal finds a complaint under subsection (1) or (2) well-founded, it must make a declaration to that effect.
- (6) If the complaint is that the temporary work agency or hirer has unreasonably refused to let the agency worker take time off as required by section 57ZZ(1) or (2), the tribunal must also order payment to the agency worker of an amount that is twice the amount of the remuneration to which the agency worker would have been entitled under section 57ZZ(3) if the agency worker had not been refused the time off.
- (7) If the complaint is that the temporary work agency has failed to pay the agency worker the whole or part of any amount to which the agency worker is entitled under section 57ZZ(3), the tribunal must also order the temporary work agency to pay to the agency worker the amount which it finds due to the agency worker.
- (8) If the complaint is that the temporary work agency or hirer has unreasonably refused to let the agency worker take time off as required by section 57ZZ2, the tribunal must also order payment to the agency worker of an amount determined in accordance with subsection (9).
- (9) The amount payable to the agency worker is –

$A \times B \times 2$

where –

- (a) A is the appropriate hourly rate for the agency worker determined in accordance with section 57ZZ1(1) and (2), and
 - (b) B is the number of working hours for which the employee would have been entitled under section 57ZZ2 to be absent if the time off had not been refused.
- (10) Where the tribunal orders that payment under subsection (6) or (8) be made by the temporary work agency and the hirer, the proportion of that amount payable by each respondent is to be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent's responsibility for the infringement to which the complaint relates.

57ZZ5 Supplementary provision about right of agency workers to time off work

- (1) For the purposes of sections 57ZZ to 57ZZ4 the working hours of an agency worker are to be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.
- (2) Without prejudice to any other duties of the hirer or temporary work agency under any enactment or rule of law, sections 57ZZ to 57ZZ4 do not apply where the agency worker –
 - (a) has not completed the qualifying period, or
 - (b) pursuant to regulation 8(a) or (b) of the Agency Workers Regulations 2010 (S.I. 2010/93), is no longer entitled to the rights conferred by regulation 5 of those Regulations.
- (3) Nothing in sections 57ZZ to 57ZZ4 imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration, of the assignment, whichever is the longer.
- (4) Sections 57ZZ to 57ZZ4 do not apply where sections 57ZT to 57ZY apply.
- (5) In this section and sections 57ZZ to 57ZZ4 the following have the same meaning as in the Agency Workers Regulations 2010 –
 - “agency worker”;
 - “assignment”;
 - “hirer”;
 - “qualifying period”;
 - “temporary work agency”.

- (6) In sections 57ZZ to 57ZZ4 the following terms have the same meaning as in the Surrogacy Act 2023 (see section 2 of that Act) –
- “assisted reproduction procedure”;
 - “intended parent”;
 - “intended parents”;
 - “surrogacy agreement”;
 - “surrogate”.
- 6 In section 99 (being regarded as unfairly dismissed: leave for family reasons), in subsection (3), after paragraph (ab) insert –
- “(ac) time off under section 57ZT or 57ZV”.
- 7 In section 225 (the calculation date in finding a week’s pay), after subsection (3B) insert –
- “(3C) Where the calculation is for the purposes of section 57ZU or 57ZX, the calculation date is the day of the appointment.”

Statutory rights to leave

- 8 The Employment Rights Act 1996 is amended as follows.
- 9 In section 75A(8) (ordinary adoption leave), for the words from “in relation to –” to the end, substitute “in relation to cases which involve an employee who is the intended parent, or one of the intended parents, under a surrogacy agreement and a child, or expected child, carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement.”
- 10 In section 75B(9) (additional adoption leave), for the words from “in relation to –” to the end, substitute “in relation to cases which involve an employee who is the intended parent, or one of the intended parents, under a surrogacy agreement and a child, or expected child, carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement.”
- 11 In section 75D (supplemental provision about adoption leave) –
- (a) in subsection (1A), for the words from “as to –” to the end, substitute “as to being the intended parent, or one of the intended parents, under a surrogacy agreement.”;
 - (b) after subsection (2) insert –
 - “(3) Terms used in section 75A(8), 75B(9) or subsection (1A) of this section which are defined for the purposes of the Surrogacy Act 2023 have the same meaning in those provisions as they have in that Act (see section 2 of that Act).”
- 12 In section 75H(18) (further provision about shared parental leave: adoption), for the words from “has applied” to “of the order,” substitute “is one of two intended parents under a surrogacy agreement and a child, or expected

- child, carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement.”.
- 13 In section 75K (supplemental provision about shared parental leave: adoption) –
- (a) in subsection (7), for the words from “as to –” to the end, substitute “as to being one of two intended parents under a surrogacy agreement.”;
 - (b) after subsection (7) insert –
 - “(8) Terms used in section 75(18) or subsection (7) of this section which are defined for the purposes of the Surrogacy Act 2023 have the same meaning in those provisions as they have in that Act (see section 2 of that Act).”
- 14 In section 80B (entitlement to paternity leave: adoption) –
- (a) in subsection (9), for the words from “has applied” to “of the order,” substitute “is one of two intended parents under a surrogacy agreement and a child, or expected child, carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement.”;
 - (b) after subsection (9) insert –
 - “(10) Terms used in subsection (9) that are defined for the purposes of the Surrogacy Act 2023 have the same meaning in that subsection as they have in that Act (see section 2 of that Act).”

State maternity allowance

- 15 In the Social Security Contributions and Benefits Act 1992, after section 35B insert –
- “35C Power to apply provision about maternity allowance: surrogacy agreements**
- (1) The Secretary of State may by regulations provide for sections 35 to 35B to have effect, with such modifications as the regulations may prescribe –
 - (a) in relation to cases which involve a person who is the intended parent, or one of the intended parents, under a surrogacy agreement and a child, or expected child, carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement, and
 - (b) so as to confer an entitlement to a maternity allowance under section 35 or 35B on such a person.
 - (2) Terms used in subsection (1) that are defined for the purposes of the Surrogacy Act 2023 have the same meaning in that subsection as they have in that Act (see section 2 of that Act).”

Statutory rights to pay

- 16 The Social Security Contributions and Benefits Act 1992 is amended as follows.
- 17 In section 171ZK (power to apply provisions relating to statutory paternity pay) –
- (a) in subsection (2), for the words from “has applied” to “of the order,”, substitute “is one of two intended parents under a surrogacy agreement and a child, or expected child, carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement,”;
 - (b) after subsection (2) insert –
 - “(3) Terms used in subsection (2) that are defined for the purposes of the Surrogacy Act 2023 have the same meaning in that subsection as they have in that Act (see section 2 of that Act).”
- 18 In section 171ZT (power to apply provisions relating to statutory adoption pay) –
- (a) in subsection (2), for the words from “in relation to –” to the end, substitute “in relation to cases which involve the intended parent, or one of the intended parents, under a surrogacy agreement and a child, or expected child, carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement.”;
 - (b) in subsection (3), for the words from “as to –” to the end, substitute “as to being the intended parent, or one of the intended parents, under a surrogacy agreement.”;
 - (c) after subsection (3) insert –
 - “(4) Terms used in subsection (2) or (3) that are defined for the purposes of the Surrogacy Act 2023 have the same meaning in those subsections as they have in that Act (see section 2 of that Act).”
- 19 In section 171ZZ5 (power to apply provisions relating to statutory shared parental pay) –
- (a) in subsection (2), for the words from “has applied” to “of the order,”, substitute “is one of two intended parents under a surrogacy agreement and a child, or expected child, carried by the surrogate as a result of an assisted reproduction procedure carried out under the agreement,”;
 - (b) in subsection (3), for the words from “as to –” to the end, substitute “as to being one of two intended parents under a surrogacy agreement.”;
 - (c) after subsection (3) insert –
 - “(4) Terms used in subsection (2) or (3) that are defined for the purposes of the Surrogacy Act 2023 have the same meaning

in those subsections as they have in that Act (see section 2 of that Act).”

Statutory rights to pay: further amendments

- 20 Schedule 5 to the Social Security Act 1989 (employment related schemes for pensions or other benefits: equal treatment for men and women) is amended as follows.
- 21 In paragraph 5A (unfair paternity leave provisions), in sub-paragraph (7B)(b), for “applicants for parental orders under section 54 of the Human Fertilisation and Embryology Act 2008”, substitute “intended parents under a surrogacy agreement”.
- 22 In paragraph 5B (unfair adoption leave provisions), in sub-paragraph (8)(b), for “applicants for parental orders under section 54 or 54A of the Human Fertilisation and Embryology Act 2008”, substitute “intended parents under a surrogacy agreement”.
- 23 In paragraph 5C (unfair shared parental leave provisions), in sub-paragraph (10)(b), for the words from “has applied” to “child”, substitute “satisfies the conditions prescribed under section 171ZV(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992, as they have effect by virtue of section 171ZZ5(2) of that Act (cases involving intended parents under a surrogacy agreement), in relation to the child,”.