



The Government's Response to the Joint Committee for Human Rights 2nd 2018 Report: Proposal for a Draft Human Fertilisation & Embryology Act 2008 (Remedial) Order 2018.

Presented to Parliament pursuant to paragraph 3(1) of Schedule 2 to the Human Rights Act 1998

July 2018

Department of Health & Social Care



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Contents

Introduction	Page 1
The draft remedial order	Page 1
JCHR Report recommendations & the Government's response	Page 3
Annex A: The revised remedial order	Page 9

The Government's Response to the Joint Committee for Human Rights 2nd 2018 Report: Proposal for a Draft Human Fertilisation & Embryology Act 2008 (Remedial) Order 2018.

1. Introduction

1.1. This Act paper presents a revised remedial order to Parliament, together with the Government's response to the Joint Committee for Human Rights' (JCHR) report and recommendations of 2 March 2018.

1.2. Surrogacy has an important role to play in our society, helping to create much-wanted families where that might otherwise not be possible. It enables relatives and friends to provide an altruistic gift to people who aren't able to have a child themselves, and can help people to have their own genetically-related children. The UK Government recognises the value of this in the 21st century where family structures, attitudes and lifestyles are much more diverse. To support this, the Law Commission has recently commenced a review of all surrogacy legislation across the UK.

2. The Draft Remedial Order

2.1 Altruistic surrogacy in the UK is legal and prescribed in primary legislation by the Surrogacy Arrangements Act 1985, with a provision providing for the transfer of legal parenthood from the surrogate (and her partner where relevant) to the intended parents set out in section 54 of the Human Fertilisation and Embryology Act 2008 ("the 2008 Act"). This provision allows couples in a marriage, civil partnership or an enduring family relationship, who are the intended parents of a child born under a surrogacy arrangement, to apply for a parental order to transfer parenthood.

2.2 In 2015, a UK resident single father, who had a child through a surrogacy arrangement in the USA, applied for a parental order for 'Child Z' through the Family Court. In September 2015, the Court rejected the application as it did not meet the requirements of the 2008 Act, because the man was not applying as part of a couple, and the Court did not consider it possible to "read down" the provisions of the 2008 Act to enable this outcome.

2.3 The applicant then brought a challenge under the Human Rights Act 1998, alleging that the provisions of the 2008 Act were in breach of Articles 8 and 14 of the European Convention on Human Rights ("ECHR") as set out in Schedule 1 to the

Human Rights Act 1998, in not allowing parental orders for a single person. The Secretary of State for Health was a party to the challenge but conceded that there was a breach of Article 14 (but not Article 8).

2.4 On 20 May 2016, the Family Court made a declaration (*Neutral Citation Number: [2016] EWHC 1191 (Fam)*) that the provision in the Human Fertilisation and Embryology Act 2008 which enables couples, but not a single person, to obtain a parental order following surrogacy is incompatible with Article 14. Article 14 prohibits discrimination in the enjoyment of Convention Rights (in this case, the right to respect for private and family life in Article 8) on the grounds of a status set out in Article 14, which it was accepted could include a single person in this context. Child Z was made a ward of court pending a change in law.

2.5 In order to address this declaration of incompatibility, the Government has introduced draft legislation through a remedial order to enable a sole applicant to obtain legal parenthood after a surrogacy arrangement. The Government also intends to bring forward a new set of parental order regulations, to replace the Human Fertilisation and Embryology (Parental Order) Regulations 2010, alongside the remedial order (as provided for under the 2008 Act) to apply modified adoption legislation to those applying for parental orders, and so extend these provisions to sole applicants.

2.6 The draft remedial order was laid on 27 November 2017 and subject to scrutiny by the JCHR. The Committee launched an immediate call for evidence and received 14 separate submissions. The Department of Health and Social Care (DHSC) also submitted advice to clarify issues raised by the Committee Secretariat. The Committee's report about the initial draft remedial order was published on 2 March 2018.

3. The Committee's Recommendations and the Government's Response

3.1 The Government welcomes the JCHR's observations about the remedial order. We have set out the JCHR recommendations and key comments from their summary and addressed each in turn.

JCHR Paras 3-4: Required information and effective responses to requests for information

The Committee considers that the procedural requirements of the HRA have been met and the Government's reasons for proceeding by way of remedial order rather than by Bill are clearly capable of being sufficiently "compelling reasons" for the purposes of section 10(2) of the Human Rights Act 1998. Further, remedying the incompatibility by way of a non-urgent order, rather than an urgent order, strikes a reasonable balance between the competing considerations of the need to avoid undue delay before remedying the incompatibility and the need to afford a proper opportunity for parliamentary scrutiny. Even so, we regret that the Government did not set out its reasons for using the non-urgent procedure. (Paragraph 29)

We recommend that in its response to the representations made, the Government clarifies its reasoning for proceeding by way of non-urgent procedure, and addresses the points we make in this Report. (Paragraph 30)

3.2 In considering the appropriateness of an urgent remedial order, the JCHR has advised that consideration be given to a number of factors, including the number of people affected, the seriousness of the impact and the significance of the rights affected. The urgent route makes the change to legislation immediately and then gives 120 days for it to be agreed through the JCHR and debate. However, the order falls if not approved within the 120 days.

3.3 The scrutiny of the draft remedial order under the non-urgent procedure, with the engagement and consultation of Parliamentarians and stakeholders is very important on a social policy issue like surrogacy, where people hold different and strong views. Under the urgent procedure stakeholders would not have the opportunity to make representations about the order before it came into effect. Additionally, the order could fall if not approved and the procedure would have to restart from the beginning.

3.4 It is also important to note that the Government must also replace the Human Fertilisation and Embryology (Parental Order) Regulations 2010 in order for the amended legislation to work, which means that an urgent order could not come into effect immediately in any case. The draft regulations were recently subject to public consultation (which ended on 23 April) and the Government's intention is to lay them to during the second stage of JCHR scrutiny of the remedial order. This should enable joint debates to take place in each House, making a more effective use of increasingly scarce Parliamentary time.

3.5 The Government has also considered the mitigating factors in our approach for individuals affected: the family court in a recent case (*M v F & SM (HFE Act 2008)* [2017] EWHC 2176 (Fam)) has taken some pragmatic decisions to ensure the ongoing welfare of the child pending the change in the law; we understand that the Family Court support service has said that any applications from single people would be accepted and then adjourned to be revisited after the law changes, and the order itself will enable retroactive applications for eligible people, for six months after the law is enacted.

JCHR para 5: Subsection (2)(b): Vires & the situation of those whose partner is not willing to take part in the application

'The Committee recommends that the Minister and the Department reconsider the drafting of section 54A(2). Were this drafting to remain, the Committee would wish to draw the special attention of both Houses to the subsection (2) of the proposed section 54A of the HFEA on the grounds that it makes an unexpected use of the enabling power. Moreover, we would draw the attention of both Houses to a doubt as to whether the Order is intra vires. This is because the vires in section 10 of the HRA are for the Minister "to make such amendments to the legislation as he considers necessary to remove the incompatibility"; this Order does not adequately remove the incompatibility with convention rights because it fails to address the human rights of a biological gamete-contributor who also wants to assert the human rights associated with building an enduring family relationship, without requiring their partner to assert a non-existent quasi-biological relationship with a child. (Paragraph 43)'

3.6 In considering its next steps, the Government has weighed up the important points on this issue that the Committee has made, alongside the strongly expressed desire of stakeholders in the sector to speedily address the incompatibility and change the law, which prevents individuals from applying for a parental order at this moment.

3.7 We recognise the uniqueness of surrogacy in relation to parenthood for people with a genetic link to their child and the risk of legal limbo for the child if the genetically related parent cannot get a parental order. We agree with the Committee that there is a group of people not covered by the provisions of the initial draft order. There are circumstances where a new partner, a recently reconciled partner or someone not involved in the original surrogacy arrangement, may not wish to be the child's parent. The Committee raised concerns about couples in an enduring relationship. However, those in marriage or a civil partnership may also be affected in the same way. We therefore propose to remove all requirements in respect of relationship status.

3.8 The Government accepts the JCHR recommendation that we amend the draft order and has extended the ability to make an application to individuals within a marriage and civil partnership, as well as in an enduring family relationship.

3.9 The revised order therefore enables sole applications from individuals regardless of relationship status. This will ensure that a biological parent is not prevented from applying for a parental order, by the decision of a partner who is not biologically related to the child and who may not wish to be recognised as a legal parent.

JCHR para 6: Subsection (3)(b): Requirement to prove a separation is permanent

'The Committee recommends that the Government reconsider the drafting of section 54A(3) to remove the requirement for a person to prove to the Courts that their separation is likely to be permanent. Were this drafting to remain, the Committee would want to bring the special attention of the two Houses to subsection (3)(b) of the proposed section 54A of the HFEA on the grounds that there is a doubt whether it is intra vires, because it goes beyond the minimum amendments necessary to remove the incompatibility, by imposing a condition which may be difficult to satisfy and is not related to any obvious policy justification. (Paragraph 46)'

3.10 The changes made by the Government in addressing JCHR recommendation para 5, in allowing applications from a sole applicant regardless of relationship status, mean that this is no longer an issue.

JCHR Para 7-8: Defective Drafting concerns relating to the Order

The Committee notes the serious drafting defect that has been corrected in the correction slip that the Department issued and invites the Department to consider and rectify further drafting defects in the proposed Order (as identified in Chapter 4 of this Report). The Committee welcomes the recognition by the Department of these drafting errors in its information note of 8 February 2018, and welcomes the Department's commitment to consider the draft further and make amendments as necessary. (Paragraph 56)

We recommend that the Government reconsider the drafting of the Order further, in light of the potential drafting defects identified in Chapter 4 of this Report and make amendments to the draft, or clarify its position, as necessary. (Paragraph 57)'

3.11 As noted by the Committee, the Government has separately provided further clarification in relation to some minor typographical issues in relation to the draft remedial order, for which DHSC has apologised.

3.12 The Committee raised concerns about what appeared to be inconsistencies in drafting in S.54A. As a number of subsections have now been removed in the

revised draft this has resolved a number of those concerns and some small drafting amendments have been made to address the others.

3.13 The Committee also identified drafting in S.54A (13), suggesting that there may be implicit requirements for other activities in subsection (1) to have occurred in the United Kingdom. On the presumption that by other activities, the Committee means activities involving the production of an embryo or sperms and eggs, these activities do not need to take place in the UK. The Committee suggests that the production might implicitly be required to be in the UK, but our view is that if the surrogate is outside the UK, then the production can't be so required – it is clearly not practical. The same wording has previously been used in S.54 (10) of the 2008 HFE Act and does not appear to have caused difficulties. We would be concerned about using a different wording in section 54A given that this might call into question the meaning of the existing sections and no misinterpretation has previously been made. No change to this drafting is therefore proposed. This paragraph now becomes S.54A (10).

3.14 Further minor amendments as indicated by the Committee have also been made in the Schedules.

JCHR Para 9: Timing of remedying declarations of incompatibility

'We are disappointed that the Government has not brought forward proposals to remedy outstanding incompatibilities with Convention rights more promptly and urge it do so as swiftly as possible. (Paragraph 60)'

3.15 Section 4 of the Human Rights Act (1998) (HRA) provides that a declaration of incompatibility (DoI) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given. There is no legal obligation on the Government to take remedial action following a declaration of incompatibility or on Parliament to accept any remedial measures the Government may propose. It has however, been the practice for the Government to consider and address such declarations either through primary legislation where possible or by way of a remedial order under section 10 of the HRA.

3.16 When addressing incompatibilities with Convention rights it is important to make sure that the most appropriate remedial measures are taken in each case. This requires careful and thorough preparation including the commissioning of legal advice, research and consultation where necessary. Consideration needs to be given to the extent to which amendment of legislation may be required, and the appropriate vehicle to do so, with due regard to the current legislative timetable. The Government seeks to inform the Committee as soon as possible after final decisions have been made on how to address an incompatibility.

3.17 Of the 27 Dols that have become final since 2000, 11 were later remedied by primary or secondary legislation, five had already been remedied by primary

legislation at the time of the declaration, three have been remedied by remedial orders, another four are due to be remedied by remedial orders, one is being remedied by other measures, and three are currently under consideration as to how to address the incompatibility.

3.18 We are pleased to say that the draft proposal for a remedial order addressing the incompatibility identified in *R (on the application of Johnson) v Secretary of State for the Home Department* was laid in Parliament on 15 March 2018.

3.19 The Court of Appeal in *R (Reilly & Hewstone) v Secretary of State for Work & Pensions; Jeffrey and Others v Secretary of State for Work & Pensions* [2016] EWCA Civ 413 ruled that the Jobseekers (Back to Work Schemes) Act 2013 (“the 2013 Act”) is incompatible with article 6 (1) (the right to a fair hearing) of the European Convention on Human Rights. The Declaration of Incompatibility affects a limited group of individuals: Jobseeker’s Allowance claimants who had live appeals against a sanction decision made under the Jobseeker’s Allowance (Employment, Skills and Enterprise Schemes) Regulations 2011 on 26 March 2013 (the date the 2013 Act came into force). The Declaration of Incompatibility does not have any impact on the continuing validity of the 2013 Act, which the Court of Appeal found effectively validates the ESE Regulations and all notifications and sanctions decisions made under the ESE Regulations.

3.20 Appeal rights were only exhausted in January 2017. Since then, and following the election, the Government has been considering the steps required to address the Declaration of Incompatibility. The Act Paper with the draft proposal for a Remedial Order to address the Declaration of Incompatibility was laid in Parliament on 28 June 2018, for the first 60 day period as required under Section 10 of the Human Rights Act 1998.

JCHR Para 10: The use of the remedial power on post-1998 Acts

‘We consider that remedial orders can amend post-1998 legislation and that this was indeed the intention of the HRA. (Paragraph 61)’

3.21 We welcome the Committee’s statement of their position on this question, which concurs with the Government’s view.

JCHR Para 11: The six month deadline

‘The Committee assumes that the Government intends the Courts to take the same approach to “six months” in section 54A as in section 54 HFEA, to ensure that the best interests of the child are borne in mind also when considering these technical formalistic requirements. In the interests of clarity, it might be helpful for the Government to clarify this intention. (Paragraph 64)’

3.22 The Government can confirm that we are content for the Courts to take the same approach to “six months” in section 54A as in section 54 of the Human Fertilisation and Embryology Act 2008. This will ensure that the Court has the opportunity to consider the best interests of the child. The issue of time limits will be addressed through the Law Commission review of surrogacy legislation.

JCHR Para 12: Consent requirements

‘The Department should clarify whether the relevant consenting or making bodies have been consulted on the consequential amendments made in Schedule 2 to subordinate legislation (which would ordinarily have consent requirements or be made by non-Ministerial bodies). (Paragraph 68)’

3.23 The Government can confirm that DHSC has consulted the Devolved Administrations and relevant Government Departments. There are no legislative consent issues arising in the order. Action is underway to update respective court rules through the relevant committees to take effect when the law changes.

Annex A

The Human Fertilisation and Embryology Act 2008
(Remedial) Order 2018

Amendments to the Human Fertilisation and Embryology Act 2008

- 2.—(1) The Human Fertilisation and Embryology Act 2008 is amended as follows.
- (2) In the heading of section 54 (parental orders) at the end insert “: two applicants”.
- (3) In subsection (1)(c) of that section, for “(8)” substitute “(8A)”.
- (4) In that section after subsection (8) insert—
- “(8A) An order relating to the child must not previously have been made under this section or section 54A, unless the order has been quashed or an appeal against the order has been allowed.”.
- (5) After section 54 insert—

“54A Parental orders: one applicant

(1) On an application made by one person (“the applicant”), the court may make an order providing for a child to be treated in law as the child of the applicant if—

- (a) the child has been carried by a woman who is not the applicant, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination,
- (b) the gametes of the applicant were used to bring about the creation of the embryo, and
- (c) the conditions in subsections (2) to (8) are satisfied.

(2) Except in a case falling within subsection (11), the applicant must apply for the order within the period of 6 months beginning with the day on which the child is born.

(3) At the time of the application and the making of the order—

- (a) the child’s home must be with the applicant, and
- (b) the applicant must be domiciled in the United Kingdom or in the Channel Islands or the Isle of Man.

(4) At the time of the making of the order the applicant must have attained the age of 18.

(5) The court must be satisfied that both—

- (a) the woman who carried the child, and
- (b) any other person who is a parent of the child but is not the applicant (including any man who is the father by virtue of section 35 or 36 or any woman who is a parent by virtue of section 42 or 43),

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

(6) Subsection (5) does not require the agreement of a person who cannot be found or is incapable of giving agreement; and the agreement of the woman who carried the child is ineffective for the purpose of that subsection if given by her less than six weeks after the child’s birth.

(7) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by the applicant for or in consideration of—

- (a) the making of the order,
- (b) any agreement required by subsection (5),
- (c) the handing over of the child to the applicant, or
- (d) the making of arrangements with a view to the making of the order,

unless authorised by the court.

(8) An order relating to the child must not previously have been made under section 54 or this section, unless the order has been quashed or an appeal against the order has been allowed.

(9) Section 54(9) applies for the purposes of an application under this section.

(10) Subsection (1)(a) applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

(11) An application which relates to a child born before the coming into force of this section may be made within the period of six months beginning with the day on which this section comes into force.”.

(6) In section 55(1)(a) and (b) (parental orders: supplementary provision) after “section 54” insert “or 54A”.

Consequential amendments

3.—(1) Schedule 1 (which contains amendments to Acts and Orders consequential on the coming into force of section 54A of the 2008 Act) has effect.

(2) Schedule 2 (which contains amendments to subordinate legislation consequential on the coming into force of section 54A of the 2008 Act) has effect.

Date _____ Parliamentary Secretary for Mental Health and Inequalities
Department of Health and Social Care
Name

SCHEDULE 1

Article 3(1)

Amendments to Acts and Orders consequential on the coming into force of section 54A of the Human Fertilisation and Embryology Act 2008

Senior Courts Act 1981

1. In paragraph 3(f)(iv) of Schedule 1 to the Senior Courts Act 1981(a) (assignment of business of High Court to the Family Division) after “section 54” insert “or 54A”.

Social Security Act 1989

2. In Schedule 5 to the Social Security Act 1989(b) (employment-related schemes for pensions or other benefits: equal treatment for men and women), in paragraph 5B(8)(b)(c) after “section 54” insert “or 54A”.

Social Security (Northern Ireland) Order 1989

3. In Schedule 5 to the Social Security (Northern Ireland) Order 1989(d) (employment-related schemes for pensions or other benefits: equal treatment for men and women), in paragraph 5B(8)(b)(e) after “section 54” insert “or 54A”.

(a) 1981 c. 54. Sub-paragraph (f) was inserted by S.I. 1991/1201, and paragraph (iv) was amended by paragraph 21 of Schedule 6 to the Human Fertilization and Embryology Act 2008. Other amendments have been made to sub-paragraph (f) which are not relevant to this Order.

(b) 1989 c. 24.

(c) Paragraph 5B was inserted by section 265(1) of the Pensions Act 2004 (c. 35) and amended by paragraph 3 of Schedule 7 to the Children and Families Act 2014 (c. 6) and S.I. 2016/413.

(d) S.I. 1989/1342 (N.I. 13).

(e) Paragraph 5B was inserted by Article 242 of the Pensions (Northern Ireland) Order 2005 (N.I. 1) and amended by paragraph 1(3) of Schedule 1 to the Work and Families Act (Northern Ireland) 2015 (c. 1).

Human Fertilisation and Embryology Act 1990

- 4.—(1) The Human Fertilisation and Embryology Act 1990(a) is amended as follows.
- (2) In section 33A(2)(q)(b) (disapplication of prohibition on disclosing information) after “section 54” insert “or subsection (1) of section 54A”.
- (3) In section 35A(2)(b)(c) (power to provide for provisions about parental orders to have effect in cases of mitochondrial donation) for “section 54” substitute “sections 54 and 54A”.

Child Support Act 1991

5. In section 26(2) of the Child Support Act 1991(d) (cases in which assumptions may be made about a child’s parentage), in Case B, after “section 54” insert “or 54A”.

Child Support (Northern Ireland) Order 1991

6. In Article 27(2) of the Child Support (Northern Ireland) Order 1991(e) (cases in which assumptions may be made about a child’s parentage), in Case B, after “section 54” insert “or 54A”.

Social Security Contributions and Benefits Act 1992

- 7.—(1) In section 171ZT (power to apply Part 12ZB) of the Social Security Contributions and Benefits Act 1992(f), for subsection (2) substitute—

“(2) The Secretary of State may by regulations provide for this Part to have effect, with such modifications as the regulations may prescribe, in relation to—

- (a) cases which involve a person who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order,
- (b) cases which involve a person who has applied, or intends to apply, for a parental order under section 54A of that Act and a child who is, or will be, the subject of the order.”.

- (2) In subsection (3)(a) of that section, after “order” insert “under section 54 or 54A of the Human Fertilisation and Embryology Act 2008”.

Social Security Contributions and Benefits (Northern Ireland) Act 1992

- 8.—(1) In section 167ZT (power to apply Part 12ZB) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(g), for subsection (2) substitute—

“(2) The Department may by regulations provide for this Part to have effect, with such modifications as may be prescribed, in relation to—

- (a) cases which involve a person who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order,

(a) 1990 c. 37.

(b) Section 33A was inserted by section 25 of the Human Fertilisation and Embryology Act 2008 (c. 22).

(c) Section 35A was inserted by section 26 of the Human Fertilisation and Embryology Act 2008.

(d) 1991 c. 48; Cases B and B1 were substituted by paragraph 36 of Schedule 6 to the Human Fertilisation and Embryology Act 2008. Other amendments were made to section 26, which are not relevant to this Order.

(e) N.I. 23; article 27 was amended by paragraph 17 of Schedule 3 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4).

(f) 1992 c. 4; section 171ZT was inserted by section 4 of the Employment Act 2002 (c. 22) and amended by section 122(6) of the Children and Families Act 2014 (c. 6).

(g) 1992 c. 7; Part 12ZB was inserted by the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)); Part 12ZB has been applied with modification to parental order cases by the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts 12ZA, 12ZB and 12ZC to Parental Order Cases) Regulations (Northern Ireland) 2015 (S.I. 2015/90).

- (b) cases which involve a person who has applied, or intends to apply, for a parental order under section 54A of that Act and a child who is, or will be, the subject of the order.”.

(2) In subsection (3)(a) of that section after “order” insert “under section 54 or 54A of the Human Fertilisation and Embryology Act 2008”.

Children (Scotland) Act 1995

9. In section 11(4)(c) of the Children (Scotland) Act 1995(**a**) (cases in which court orders may not be made) after “section 54” insert “or 54A”.

Children (Northern Ireland) Order 1995

10. In Article 8(4)(g) of the Children (Northern Ireland) Order 1995(**b**) (interpretation) after “section 54” insert “or “54A”.

(a) 1995 c. 36; section 11(4) was amended by paragraph 9(2) of Schedule 2, and Schedule 3 to the Adoption and Children (Scotland) Act 2007 (asp 4) and paragraph 52 of Schedule 6 to the Human Fertilisation and Embryology Act 2008 (c. 22).
(b) S.I. 1995/755 (N.I. 2); article 8(4)(g) was substituted by paragraph 73 of Schedule 6 to the Human Fertilisation and Embryology Act 2008 (c. 22).

Employment Rights Act 1996

- 11.**—(1) The Employment Rights Act 1996(a) is amended as follows.
- (2) Section 57ZE (right to time off to accompany to ante-natal appointment)(b) is amended as follows.
- (3) Omit the “or” before subsection (7)(e).
- (4) After subsection (7)(e) insert—
- “or
- (f) the person is a potential applicant for a parental order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of the expected child.”.
- (5) After subsection (10) insert—
- “(10A) For the purposes of subsection (7)(f) a person is a potential applicant for a parental order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—
- (a) the person intends to apply for such an order in respect of the expected child within the time allowed by section 54A(2),
- (b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in section 54A(1)(a),
- (c) the requirement in section 54A(1)(b) is satisfied by reference to the person, and
- (d) the person expects that he or she will satisfy the conditions in section 54A(3), (4) and (7) as regards the intended application.”.
- (6) Section 57ZG (right to time off to accompany to ante-natal appointment: agency workers)(c) is amended as follows.
- (7) Omit the “or” before subsection (7)(e).
- (8) At the end of subsection (7)(e) insert—
- “, or
- (f) the person is a potential applicant for a parental order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of the expected child.”.
- (9) After subsection (10) insert—
- “(10A) For the purposes of subsection (7)(f) a person is a potential applicant for a parental order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—
- (a) the person intends to apply for such an order in respect of the expected child within the time allowed by section 54A(2),
- (b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in section 54A(1)(a),
- (c) the requirement in section 54A(1)(b) is satisfied by reference to the person, and
- (d) the person expects that he or she will satisfy the conditions in section 54A(3), (4) and (7) as regards the intended application.”.
- (10) In section 75A (ordinary adoption leave)(d) for subsection (8) substitute—

(a) 1996 c. 18. Section 11(4)(c) was amended by paragraph 52(2) of Schedule 6 to the Human Fertilisation and Embryology Act 2008 (c. 22).

(b) Section 57ZE was inserted by section 127(1) of the Children and Families Act 2014 (c. 6).

(c) Section 57ZG was inserted by section 127(1) of the Children and Families Act 2014 (c. 6).

(d) Section 75A was inserted by section 3 of the Employment Act 2002 (c. 22) and amended by paragraph 33 of Schedule 1 to the Work and Families Act 2006 (c. 18); sections 118, 121(1) and 122(1) of the Children and Families Act 2014 (c. 6); S.I. 2016/413; and applied with modifications by S.I. 2014/3095.

“(8) The Secretary of State may by regulations provide for this section to have effect, with such modifications as the regulations may prescribe, in relation to—

- (a) cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order,
- (b) cases which involve an employee who has applied, or intends to apply, for a parental order under section 54A of that Act and a child who is, or will be, the subject of the order.”.

(11) In section 75B (additional adoption leave)(a) for subsection (9) substitute—

“(9) The Secretary of State may by regulations provide for this section to have effect, with such modifications as the regulations may prescribe, in relation to—

- (a) cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order,
- (b) cases which involve an employee who has applied, or intends to apply, for a parental order under section 54A of that Act and a child who is, or will be, the subject of the order.”.

(12) In section 75D(1A)(a) (supplemental)(b) after “order” insert “under section 54 or 54A of the Human Fertilisation and Embryology Act 2008”.

Family Law Act 1996

12. In section 63(2)(h) of the Family Law Act 1996 (interpretation)(c) for “section 54” substitute “sections 54 and 54A”.

Employment Rights (Northern Ireland) Order 1996

13.—(1) The Employment Rights (Northern Ireland) Order 1996(d) is amended as follows.

(2) Article 85ZE (right to time off to accompany to ante-natal appointments)(e) is amended as follows.

(3) Omit the “or” before paragraph (7)(e).

(4) At the end of paragraph (7)(e) insert—

“or

- (f) the person is a potential applicant for a parental order under section 54A of that Act in respect of the expected child.”.

(5) After paragraph (10) insert—

“(10A) For the purposes of paragraph (7)(f) a person is a potential applicant for a parental order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—

- (a) the person intends to apply for such an order in respect of the expected child within the time allowed by subsection (2) of that section,
- (b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in subsection (1)(a) of that section,

(a) Section 75B was inserted by section 3 of the Employment Act 2002 (c. 22) and amended by paragraph 34 of Schedule 1 to the Work and Families Act 2006 (c. 18); section 118(1) and (5) and 122(2) of the Children and Families Act 2014 (c. 6); and applied with modifications by S.I. 2014/3095.

(b) Section 75D was inserted by section 3 of the Employment Act 2002 (c. 22) and amended by section 122(3) of the Children and Families Act 2014 (c. 6).

(c) 1996 c. 27. Subsection (2)(h) of section 63 was substituted by paragraph 37 of Schedule 6 to the Human Fertilisation and Embryology Act 2008; other amendments have been made to section 63, which are not relevant to this Order.

(d) S.I. 1996/1919 (N.I. 16).

(e) Article 87ZE was inserted by section 15(2) of the Work and Families Act (Northern Ireland) 2015 (c. 1).

- (c) the requirement in subsection (1)(b) of that section is satisfied by reference to the person, and
 - (d) the person expects that he or she will satisfy the conditions in subsections (3), (4) and (7) of that section as regards the intended application.”.
- (6) Article 85ZG (right to time off to accompany to ante-natal appointments: agency workers)(a) is amended as follows.
- (7) Omit the “or” before paragraph (7)(e).
 - (8) At the end of paragraph (7)(e) insert—
 - “, or
 - (f) the person is a potential applicant for a parental order under section 54A of that Act in respect of the expected child.”.
 - (9) After paragraph (10) insert—
 - “(10A) For the purposes of paragraph (7)(f) a person is a potential applicant for a parental order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—
 - (a) the person intends to apply for such an order in respect of the expected child within the time allowed by subsection (2) of that section,
 - (b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in subsection (1)(a) of that section,
 - (c) the requirement in subsection (1)(b) of that section is satisfied by reference to the person, and
 - (d) the person expects that he or she will satisfy the conditions in subsections (3), (4) and (7) of that section as regards the intended application.”.
 - (10) For Article 107AC (ordinary adoption leave: power to apply to other cases)(b) substitute—

“107AC Power to apply Article 107A to other cases

The Department may by regulations provide for Article 107A to have effect, with such modifications as may be prescribed, in relation to—

- (a) cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order,
- (b) cases which involve an employee who has applied, or intends to apply, for a parental order under section 54A of that Act and a child who is, or will be, the subject of the order.”.

- (11) For Article 107BA (additional adoption leave: power to apply to other cases) substitute—

“107BA Power to apply Article 107B to other cases

The Department may by regulations provide for Article 107B(c) to have effect, with such modifications as may be prescribed, in relation to—

- (a) cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order,

(a) Article 87ZG was inserted by section 15(2) of the Work and Families Act (Northern Ireland) 2015 (c. 1).
 (b) Article 107AC was inserted by section 10(2) of the Work and Families Act (Northern Ireland) 2015 (c. 1).
 (c) Article 107A was applied with modifications by the Employment Rights (Northern Ireland) Order 1996 (Application of Articles 107A, 107B, 107G, 107I, 112A and 112B to Parental Order Cases) Regulations (Northern Ireland) 2015 (S.R. 2015/100).

- (b) cases which involve an employee who has applied, or intends to apply, for a parental order under section 54A of that Act and a child who is, or will be, the subject of the order.”.

(12) In Article 107D(1A)(a) (supplemental provision) after “order” insert “under section 54 or 54A of the Human Fertilisation and Embryology Act 2008”.

Family Homes and Domestic Violence (Northern Ireland) Order 1998

14. In Article 2(3)(f) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (interpretation)(a) for “section 54” substitute “sections 54 and 54A”.

Legal Aid, Sentencing and Punishment of Offenders Act 2012

15. In paragraph 12(9) of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (services which are civil legal services)(b), in paragraph (o) of the definition of “family enactment”, for “section 54” substitute “sections 54 and 54A”.

SCHEDULE 2

Article 3(2)

Amendments to subordinate legislation consequential on the coming into force of section 54A of the Human Fertilisation and Embryology Act 2008

High Court (Distribution of Business) Order 1991

1. In article 2(a)(iv) of the High Court (Distribution of Business) Order 1991(c), after “section 54” insert “or section 54A”.

Social Fund Maternity and Funeral Expenses (General) Regulations 2005

2. In regulation 3(1) of the Social Fund Maternity and Funeral Expenses (General) Regulations 2005(d), in the definition of “parental order”, after “section 54” insert “or section 54A”.

Family Proceedings Fees Order 2008

3. In entry 1.8 in the table in Schedule 1 of the Family Proceedings Fees Order 2008(e), after “section 54” insert “or section 54A”.

Family Procedure Rules 2010

4.—(1) The Family Procedure Rules 2010(f) are amended as follows.

(2) In the heading to Part 13 (proceedings under section 54 of the Human Fertilisation and Embryology Act 2008), after “section 54” insert “or section 54A”.

(3) In the definition of “parental order” in rule 13.1(2) (interpretation and application), after “section 54” insert “or section 54A”.

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- (a) S.I. 1998/1071 (N.I. 6); article 2(3)(f) was amended by paragraph 79 of Schedule 6 to the Human Fertilisation and Embryology Act 2008 (c. 22); there are other amendments to that article which are not relevant to this Order.
- (b) 2012 c. 10; there are amendments to paragraph 12 of Schedule 1 which are not relevant to this Order.
- (c) S.I. 1991/1210; article 2 was amended by paragraph 1(2) of Schedule 11 to the Constitutional Reform Act 2005 (c. 4) and S.I. 2010/986.
- (d) S.I. 2005/3061; amended by S.I. 2010/2760; there are other amendments to these Regulations which are not relevant to this Order.
- (e) S.I. 2008/1054; the table in Schedule 1 was substituted by S.I. 2014/877.
- (f) S.I. 2010/2955; amended by S.I. 2013/3204; S.I. 2014/843; and S.I. 2014/954; there are other amendments to these Rules which are not relevant to this Order.

(4) In rule 13.3(1) (who the parties are), after “parental order” insert “under section 54 of the 2008 Act”.

(5) After rule 13.3(1), insert—

“(1A) An application for a parental order under section 54A of the 2008 Act may only be made by one person who satisfies the conditions set out in subsection (1) of that section.”.

(6) In rule 16.35(2) (powers and duties of the parental order reporter), for paragraph (a) substitute—

“(a) investigate in the case of a parental order under—

(i) section 54(1) of the 2008 Act, the matters set out in section 54(1) to (8) of that Act;

(ii) section 54A(1) of the 2008 Act, the matters set out in section 54A(1) to (7) of that Act;”.

(7) In rule 27.11(1)(b)(i) (attendance at private hearings), after “section 54” insert “or section 54A”.

Family Court (Composition and Distribution of Business) Rules 2014

5.—(1) The Family Court (Composition and Distribution of Business) Rules 2014(a) are amended as follows.

(2) In Schedule 1 (allocation)—

(a) in paragraph 1(o), after “section 54” insert “or section 54A”;

(b) in paragraph 3(c), after “section 54” insert “or section 54A”;

(c) in paragraph 4(f), after “section 54” insert “or section 54A”.

Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA, 12ZB and 12ZC to Parental Order Cases) Regulations 2014

6.—(1) The Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA, 12ZB and 12ZC to Parental Order Cases) Regulations 2014(b) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) for the definition of “intended parent” substitute—

““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

(a) applies, or intends to apply during the period of 6 months beginning with that day—

(i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or

(ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and

(b) expects the court to make such an order in respect of the child;”;

(b) omit the definition of “parental order” and the “and” at the end of that definition;

(c) omit the definition of “parental order parent”;

(d) in the appropriate place insert—

““section 54 parental order parent” means a person—

(a) on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of a child; or

(a) S.I. 2014/840. Schedule 1 was amended, which are not relevant to this Order.

(b) S.I. 2014/2866.

- (b) who is an intended parent of a child by reference to an application or intended application for such an order;

“section 54A parental order parent” means a person—

- (a) on whose application the court has made an order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of a child; or

- (b) who is an intended parent of a child by reference to an application or intended application for such an order.”.

(3) In regulation 3 (application of Part 12ZA of the Act to parental order parents) for “parental order parents” substitute “section 54 parental order parents”.

(4) In regulation 4 (application of Part 12ZB of the Act to parental order parents) for “parental order parents” substitute “section 54 parental order parents and section 54A parental order parents”.

(5) In regulation 5 (application of Part 12ZC of the Act to parental order parents) for “parental order parents” substitute “section 54 parental order parents”.

(6) Schedule 2 (application of Part 12ZB of the Act to parental order cases) is amended as follows.

(7) In the modifications of section 171ZL of the Social Security Contributions and Benefits Act 1992—

- (a) in sub-paragraph (i) of the substituted paragraph (a) of subsection (2), for “parental order” substitute “an order under section 54 or 54A of the Human Fertilisation and Embryology Act 2008”;

- (b) after the substituted paragraph (a) of subsection (2) insert—

“At the beginning of paragraph (e) of subsection (2) insert—

“in the case of a person on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 or who is an intended parent of a child by reference to an application or intended application for such an order,””;

- (c) in the substituted paragraph (b) of subsection (4), for “parental order” substitute “an order under section 54 of the Human Fertilisation and Embryology Act 2008”; and

- (d) for the inserted subsection (8A) substitute—

“(8A) In this section “intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

- (a) applies, or intends to apply during the period of 6 months beginning with that day—

- (i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or

- (ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and

- (b) expects the court to make such an order in respect of the child.”.

Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations 2014

7.—(1) The Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations 2014(a) are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) in the appropriate place, insert—

(a) S.I. 2014/2934.

““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

- (a) applies, or intends to apply during the period of 6 months beginning with that day—
 - (i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or
 - (ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and
- (b) expects the court to make such an order in respect of the child;”;

““section 54 parental order parent” means a person—

- (a) on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of a child; or
- (b) who is an intended parent of a child by reference to an application or intended application for such an order;

“section 54A parental order parent” means a person—

- (a) on whose application the court has made an order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of a child; or
- (b) who is an intended parent of a child by reference to an application or intended application for such an order.”; and

- (b) omit the definition of “parental order parent”.

(3) In regulation 6 (application of the Pay Regulations to intended parents and parental order parents) for paragraph (1) substitute—

“(1) The provisions of the Pay Regulations, in so far as they apply to statutory paternity pay (adoption), shall apply to a section 54 parental order parent with the modifications set out in this Part of these Regulations.

(1A) The provisions of the Pay Regulations, in so far as they apply to statutory adoption pay, shall apply to—

- (a) a section 54 parental order parent; and
- (b) a section 54A parental order parent,

with the modifications set out in this Part of these Regulations.”.

(4) In regulation 7 (application of regulation 2 of the Pay Regulations)—

- (a) in paragraph (a)(ii)—
 - (i) in the appropriate place, insert—

““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—
 - (a) applies, or intends to apply during the period of 6 months beginning with that day—
 - (i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or
 - (ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and
 - (b) expects the court to make such an order in respect of the child;”;
- (ii) in the definition of “Parent A”, for “the intended parent or parental order parent” substitute “the section 54 parental order parent”;
- (iii) omit the definition of “parental order parent”; and
- (iv) in the appropriate place, insert—

““section 54 parental order parent” means a person—

- (a) on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of a child; or
- (b) who is an intended parent of a child by reference to an application or intended application for such an order;

“section 54A parental order parent” means a person—

- (a) on whose application the court has made an order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of a child; or
- (b) who is an intended parent of a child by reference to an application or intended application for such an order;”;

(b) in paragraph (b), in the substituted paragraph (2), for—

- (i) “An intended parent or parental order parent” substitute “A section 54 parental order parent”; and
- (ii) “the other intended parent or parental order parent” substitute “the other section 54 parental order parent”.

(5) In regulation 8 (application of regulation 3 of the Pay Regulations), for “as they apply an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent”.

(6) After regulation 8 insert—

“**8A.** Regulation 3 (application) of the Pay Regulations as they apply to a section 54A parental order parent shall read as if—

- (a) paragraph (1) were omitted; and
- (b) for paragraph (2) there were substituted—

“(2) Subject to the provisions of Part 12ZB of the Act (statutory adoption pay) and of these Regulations, there is entitlement to statutory adoption pay in respect of children whose expected week of birth begins on or after the day which follows the last day of the period of 120 days beginning with the day on which the Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 comes into force.”.

(7) In regulation 9 (application of regulation 11 of the Pay Regulations)—

- (a) for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent”; and
- (b) in paragraph (a), in the inserted sub-paragraph (a), for “an intended parent or” substitute “a section 54”.

(8) In regulation 10 (application of regulation 11A of the Pay Regulations) for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent”.

(9) In regulation 11 (application of regulation 12 of the Pay Regulations), for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent”.

(10) In regulation 12 (application of regulation 13 of the Pay Regulations), for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent”.

(11) In regulation 13 (application of regulation 14 of the Pay Regulations), for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent”.

(12) In regulation 14 (application of regulation 15 of the Pay Regulations), for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent”.

(13) In regulation 15 (application of regulation 16 of the Pay Regulations), for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent”.

(14) In regulation 16 (application of regulation 20 of the Pay Regulations), for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent”.

(15) In regulation 17 (application of regulation 21 of the Pay Regulations), for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent or a section 54A parental order parent”.

(16) In regulation 18 (application of regulation 22 of the Pay Regulations)—

- (a) for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent”;
- (b) in paragraph (a), for paragraph (b) of the substituted paragraph (1) substitute—
 - “(b) the section 54 parental order parent who is entitled to statutory adoption pay does not apply for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child within the time limit set by subsection (3) of that section;”;
- (c) in paragraph (a), in paragraph (c) of the substituted paragraph (1), for “a parental order” substitute “an order under that section”;
- (d) in paragraph (b)(ii), in the substituted sub-paragraph (b), for “a parental order” substitute “an order under that section”; and
- (e) in paragraph (b)(iii), in the substituted sub-paragraph (c), for “a parental order” substitute “an order under that section”.

(17) After regulation 18, insert—

“18A. In regulation 22 (adoption pay period in cases where adoption is disrupted) of the Pay Regulations as they apply to a section 54A parental order parent—

(a) paragraph (1) shall apply as if that paragraph read—

“(1) The adoption pay period shall terminate in accordance with the provisions of paragraph (2) where—

- (a) the child dies;
- (b) the section 54A parental order parent does not apply for an order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of the child within the time limit set by subsection (2) of that section; or
- (c) the section 54A parental order parent’s application for an order under that section in respect of the child is refused, withdrawn or otherwise terminated and any time limit for an appeal or a new application has expired.”; and

(b) in paragraph (3)—

(i) sub-paragraph (a) shall apply as if the reference to paragraph (1)(a)(i) were a reference to paragraph (1)(a);

(ii) sub-paragraph (b) shall apply as if that sub-paragraph read—

“(b) in a case falling within paragraph (1)(b) the week during which the time limit in section 54A(2) of the Human Fertilisation and Embryology Act 2008 for an application for an order under that section for the child expires;”
; and

(iii) sub-paragraph (c) shall apply as if that sub-paragraph read—

“(c) in a case falling within paragraph (1)(c) the week during which the section 54A parental order parent’s application for an order under that section is refused, withdrawn or otherwise terminated without the order being granted.”

(18) In regulation 19 (application of regulation 23 of the Pay Regulations), for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent or a section 54A parental order parent”.

- (19) In regulation 20 (application of regulation 24 of the Pay Regulations)—
- (a) for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent”; and
 - (b) in paragraph (b)—
 - (i) in paragraph (a) of the substituted paragraph (2), for “parental order” substitute “an order under that section”; and
 - (ii) in paragraph (b) of the substituted paragraph (2), for “parental order” substitute “an order under that section”.
- (20) After regulation 20, insert—

“**20A.** In regulation 24 (evidence of entitlement to statutory adoption pay) of the Pay Regulations as they apply to a section 54A parental order parent—

“**24.**—(1) A section 54A parental order parent shall provide evidence of his or her entitlement to statutory adoption pay by providing to the person who will be liable to pay it (“E”) a statutory declaration specified in paragraph (2) where E requests it in accordance with paragraph (3).

(2) The statutory declaration referred to in paragraph (1) is a statutory declaration stating that the person making the declaration—

- (a) has applied, or intends to apply, under section 54A of the Human Fertilisation and Embryology Act 2008 for an order under that section in respect of the child within the time limit for making such an application; and
- (b) expects the court to make an order under that section on that application in respect of the child.

(3) The declaration referred to in paragraph (1) shall be provided to E within 14 days of E requesting that declaration where E requests it within 14 days of receiving the notice under section 171ZL(6) of the Act.”.

(21) In regulation 21 (application of regulation 25 of the Pay Regulations), for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent or a section 54A parental order parent”.

(22) In regulation 22 (application of regulation 29 of the Pay Regulations), for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent or a section 54A parental order parent”.

(23) In regulation 23 (application of regulation 30 of the Pay Regulations), for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent or a section 54A parental order parent”.

(24) In regulation 24 (application of regulation 40 of the Pay Regulations) for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent or a section 54A parental order parent”.

(25) In regulation 26 (modification of the Administration Regulations in Parental Order cases), for “as those sections apply to an intended parent or to a parental order parent” substitute “as those sections apply to a section 54 parental order parent or a section 54A parental order parent”.

Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014

8.—(1) The Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations(a) are amended as follows.

(2) In regulation 1(2)—

(a) S.I. 2014/3095.

- (a) for the definition of “intended parent” substitute—
- ““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—
- (a) applies, or intends to apply during the period of 6 months beginning with that day—
- (i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or
- (ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and
- (b) expects the court to make such an order in respect of the child;”;
- (b) omit the definition of “parental order” and the “and” at the end of that definition;
- (c) omit the definition of “parental order parent”;
- (d) in the appropriate place insert—
- ““section 54 parental order parent” means a person—
- (a) on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of a child; or
- (b) who is an intended parent of a child by reference to an application or intended application for such an order;
- “section 54A parental order parent” means a person—
- (a) on whose application the court has made an order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of a child; or
- (b) who is an intended parent of a child by reference to an application or intended application for such an order.”.
- (3) In regulation 2 for “parental order parents” substitute “section 54 parental order parents and section 54A parental order parents”.
- (4) In regulation 3 for “parental order parents” substitute “section 54 parental order parents”.
- (5) In regulation 4 for “parental order parents” substitute “section 54 parental order parents”.
- (6) In Schedule 1, in the second column in the entry for section 75G, in the insertion of subsection (6A), for “intended parent” to the end, substitute—
- ““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—
- (a) applies, or intends to apply during the period of 6 months beginning with that day—
- (i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or
- (ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and
- (b) expects the court to make such an order in respect of the child; and
- “parental order” means an order under section 54 or 54A of the Human Fertilisation and Embryology Act 2008.”.
- (7) In Schedule 2, in the second column in the entry for section 80B, in the insertion of subsection (7A), from “intended parent” to the end, substitute—
- ““intended parent” in relation to a child, means a person who, on the day of the child’s birth—
- (a) applies, or intends to apply during the period of 6 months beginning with that day—
- (i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or

- (ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and
 - (b) expects the court to make such an order in respect of the child; and
- “parental order” means an order under section 54 or 54A of the Human Fertilisation and Embryology Act 2008.”.

Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014

9.—(1) The Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014(a) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) for the definition of “intended parent” substitute—

““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

- (a) applies, or intends to apply during the period of 6 months beginning with that day—
 - (i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or
 - (ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and
- (b) expects the court to make such an order in respect of the child;”;

(b) omit the definition of “parental order”;

(c) omit the definition of “parental order parent”;

(d) in the appropriate place insert—

““section 54 parental order parent” means a person—

- (a) on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of a child; or
- (b) who is an intended parent of a child by reference to an application or intended application for such an order;

“section 54A parental order parent” means a person—

- (a) on whose application the court has made an order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of a child; or
- (b) who is an intended parent of a child by reference to an application or intended application for such an order.”.

(3) For regulation 3 (application of the Leave Regulations to parental order parents), substitute—

“**3.**—(1) The provisions of the Leave Regulations, in so far as they apply to paternity leave (adoption) apply to section 54 parental order parents with the modifications set out in Part 2 of these Regulations.

(2) The provisions of the Leave Regulations, in so far as they apply to statutory adoption leave, apply to—

- (a) section 54 parental order parents; and
- (b) section 54A parental order parents,

with the modifications set out in Part 2 of these Regulations.”.

(4) In regulation 4 (application of the Curtailment Regulations to Parental Order Parents), after the second occasion the words “apply to” appear, insert “section 54”.

(a) S.I. 2014/3096.

(5) In regulation 5 (application of the SPL Regulations to Parental Order Parents), after the second occasion the words “apply to” appear, insert “section 54”.

(6) In regulation 6 (application of regulation 2 of the Leave Regulations)—

(a) for “parental order parents” substitute “section 54 parental order parents and section 54A parental order parents”;

(b) in paragraph (a)(iii)—

(i) for the definition of “intended parent”, substitute—

““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

(a) applies, or intends to apply during the period of 6 months beginning with that day—

(i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or

(ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and

(b) expects the court to make such an order in respect of the child;”;

(ii) in the definition of “Parent A” after “means the” insert “section 54”;

(iii) omit the definitions of “parental order” and “parental order parent”;

(iv) in the relevant place insert—

““section 54 parental order parent” means a person—

(a) on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of a child; or

(b) who is an intended parent of a child by reference to an application or intended application for such an order;

“section 54A parental order parent” means a person—

(a) on whose application the court has made an order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of a child; or

(b) who is an intended parent of a child by reference to an application or intended application for such an order;”;

(v) for the definition of “parental statutory declaration”, substitute—

““parental statutory declaration” means a statutory declaration stating that the person making the declaration—

(a) has applied, or intends to apply—

(i) under section 54 of the Human Fertilisation and Embryology Act 2008 with another person; or

(ii) under section 54A of that Act, alone,

for a parental order under that section in respect of the child within the time limit for making such an application; and

(b) expects the court to make such an order in respect of the child;”;

(c) in paragraph (c), before the words “parental order parent” on each occasion they appear, insert “section 54”.

(7) In regulation 7 (application of regulation 3 of the Leave Regulations) after “apply to” insert “section 54”.

(8) After regulation 7, insert—

“7A. Regulation 3 (application) of the Leave Regulations as they apply to section 54A parental order parents shall read as if—

(a) paragraph (1) were omitted;

(b) the words of paragraph (2) were—

“The provisions in relation to adoption leave under regulation 15 have effect in relation to children whose expected week of birth begins on or after the last day of the period of 120 days beginning with the day on which the Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 comes into force.”; and

(c) in paragraphs (3) and (6), the words “8th December 2002” were “on or after the day on which the Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 comes into force”.

(9) In regulation 8 (application of regulation 4 of the Leave Regulations), after “apply to” insert “section 54”.

(10) In regulation 9 (application of regulation 8 of the Leave Regulations)—

(a) after “apply to” insert “section 54”; and

(b) in paragraph (d)(iii), in the substituted paragraph (d), for “is a parental order parent” substitute “is a section 54 parental order parent”.

(11) In regulation 10 (application of regulation 9 of the Leave Regulations), after “apply to” insert “section 54”.

(12) In regulation 11 (application of regulation 10 of the Leave Regulations)—

(a) after “apply to” insert “section 54”; and

(b) in paragraph (3)(c) of the substituted regulation 10, before “parental order” insert “section 54”.

(13) In regulation 12 (application of regulation 11 of the Leave Regulations), after “apply to” insert “section 54”.

(14) In regulation 13 (application of regulation 15 of the Leave Regulations)—

(a) after “apply to” insert “section 54”; and

(b) in paragraph (a), in the substituted paragraph (2)(a), before “parental order” insert “section 54”.

(15) After regulation 13, insert—

“**13A.** In regulation 15 (entitlement to ordinary adoption leave) of the Leave Regulations, as they apply to section 54A parental order parents—

(a) paragraph (1)(a) shall read as if the word “conditions” were “condition”;

(b) paragraph (2) shall read as if the words of that paragraph were—

“The condition referred to in paragraph (1) is that the employee is a child’s section 54A parental order parent.”;

(c) paragraph (4) shall read as if the words of that paragraph were—

“An employee’s entitlement to leave under this regulation shall not be affected by the birth or expected birth of more than one child as a result of the same pregnancy.”

(16) In regulation 14 (application of regulations 16 and 17 of the Leave Regulations), for “parental order parents” substitute “section 54 parental order parents and section 54A parental order parents”.

(17) In regulation 15 (application of regulation 18 of the leave regulations), for “parental order parents” substitute “section 54 parental order parents and section 54A parental order parents”.

(18) In regulation 16 (application of regulation 20 of the Leave Regulations), after “apply to” insert “section 54”.

(19) After regulation 16, insert—

“**16A.** In regulation 20 (additional adoption leave: entitlement duration and commencement) of the Leave Regulations as they apply to section 54A parental order

parents, paragraph (1)(a) shall read as if the words of that sub-paragraph were “the employee is a section 54A parental order parent in respect of that child.””.

(20) In regulation 17 (application of regulation 22 of the Leave Regulations)—

- (a) after “apply to” insert “section 54”;
- (b) in paragraph (a) in the substituted paragraph (1) for sub-paragraphs (a) to (c) substitute—
 - “(a) the employee does not apply for an order under section 54 of the Human Fertilisation and Embryology Act 2008 within the time limit set by subsection (3) of that section;
 - (b) the employee’s application for an order under that section for the child is refused, withdrawn or otherwise terminated without the order being granted and any time for an appeal or a new application has expired; or
 - (c) the child dies.”;
- (c) in paragraph (b)(i) for “a parental order” substitute “an order under that section”; and
- (d) in paragraph (b)(ii) for “a parental order” substitute “an order under that section”.

(21) After regulation 17, insert—

“**17A.** In regulation 22 (disrupted placement in the course of adoption leave) of the Leave Regulations as they apply to section 54A parental order parents—

- (a) paragraph (1) shall read as if the words of that paragraph were—
 - “This regulation applies where—
 - (a) the employee does not apply for an order under section 54A of the Human Fertilisation and Embryology Act 1998 within the time limit set by subsection (2) of that section;
 - (b) the employee’s application for an order under that section for the child is refused, withdrawn or otherwise terminated without the order being granted and any time limit for an appeal or new application has expired; or
 - (c) the child dies.”;
- (b) paragraph (3) shall read as if—
 - (i) in paragraph (a), the words from “the person with whom” to the end were “the time limit in section 54A(2) of the Human Fertilisation and Embryology Act 2008 for an application for an order under that section for the child expires;”;
 - (ii) in paragraph (b), the words “paragraph (1)(b)(i)” to the end were “paragraph (1)(b), the week in which the employee’s application for an order under that section is refused, withdrawn or otherwise terminated without the order being granted;”;
 - (iii) in paragraph (c), the words “paragraph (1)(b)(ii)” to the end were “paragraph (1)(c), the week during which the child dies”; and
- (c) paragraph (3A) shall be treated as omitted.”.

(22) In regulation 18 (application of regulation 2 of the Curtailment Regulations) after “apply to” insert “section 54”.

(23) In regulation 19 (application of regulation 3 of the Curtailment Regulations) after “apply to” insert “section 54”.

(24) In regulation 20 (application of regulation 2 of the SPL Regulations) after “apply to” insert “section 54”.

(25) In regulation 21 (application of regulation 3 of the SPL Regulations)—

- (a) after “apply to” insert “section 54”; and
- (b) in paragraph (c) in the appropriate place, insert—
 - ““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

- (a) applies, or intends to apply during the period of 6 months beginning with that day, with another person for a parental order in respect of the child; and
- (b) expects the court to make a parental order on that application in respect of the child;”;

““parental order” means an order under section 54(1) of the Human Fertilisation and Embryology Act 2008;”.

(26) In regulation 22 (application of regulation 20 of the SPL Regulations), after “apply to” insert “section 54”.

(27) In regulation 23 (application of regulation 21 of the SPL Regulations), after “apply to” insert “section 54”.

(28) In regulation 24 (application of regulation 23 of the SPL Regulations), after “apply to” insert “section 54”.

(29) In regulation 25 (application of regulation 24 of the SPL Regulations), after “apply to” insert “section 54”.

(30) In regulation 26 (application of regulation 25 of the SPL Regulations) after “apply to” insert “section 54”.

(31) In regulation 27 (application of regulation 26 of the SPL Regulations), for the first occasion the words “parental order” appear, substitute “section 54 parental order”.

(32) In regulation 28 (application of regulation 28 of the SPL Regulations), after “apply to” insert “section 54”.

(33) In regulation 29 (application of regulation 32 of the SPL Regulations), after “apply to” insert “section 54”.

(34) In regulation 30 (application of regulation 34 of the SPL Regulations), after “apply to” insert “section 54”.

(35) In regulation 31 (application of regulation 35 of the SPL Regulations), after “apply to” insert “section 54”.

(36) In regulation 32 (application of regulation 36 of the SPL Regulations), after “apply to” insert “section 54”.

(37) In regulation 33 (application of the Schedule to the SPL Regulations), after “apply to” insert “section 54”.

Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts 12ZA, 12ZB and 12ZC to Parental Order Cases) Regulations (Northern Ireland) 2015

10.—(1) The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts 12ZA, 12ZB and 12ZC to Parental Order Cases) Regulations (Northern Ireland) 2015(a) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) for the definition of “intended parent” substitute—

““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

- (a) applies, or intends to apply during the period of 6 months beginning with that day—
 - (i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or
 - (ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and

(a) S.R. 2015 No. 90.

- (b) expects the court to make such an order in respect of the child;”;
- (b) omit the definition of “parental order” and the “and” at the end of that definition;
- (c) omit the definition of “parental order parent”;
- (d) in the appropriate place insert—
 - ““section 54 parental order parent” means a person—
 - (a) on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of a child; or
 - (b) who is an intended parent of a child by reference to an application or intended application for such an order;
 - “section 54A parental order parent” means a person—
 - (a) on whose application the court has made an order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of a child; or
 - (b) who is an intended parent of a child by reference to an application or intended application for such an order.”.
- (3) In regulation 3 for “parental order parents” substitute “section 54 parental order parents”.
- (4) In regulation 4 for “parental order parents” substitute “section 54 parental order parents and section 54A parental order parents”.
- (5) In regulation 5 for “parental order parents” substitute “section 54 parental order parents”.
- (6) Schedule 2 (application of Part 12ZB of the Act to parental order cases) is amended as follows.
- (7) In the modifications of section 167ZL of the Social Security Contributions and Benefits (Northern Ireland) Act 1992—
 - (a) in sub-paragraph (i) of the substituted paragraph (a) of subsection (2), for “parental order” substitute “an order under section 54 or 54A of the Human Fertilisation and Embryology Act 2008”;
 - (b) after the substituted paragraph (a) of subsection (2) insert—
 - “At the beginning of paragraph (e) of subsection (2) insert—
 - “in the case of a person on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 or who is an intended parent of a child by reference to an application or intended application for such an order;”;
 - (c) in the substituted paragraph (b) of subsection (4), for “parental order” substitute “an order under section 54 of the Human Fertilisation and Embryology Act 2008”; and
 - (d) for the inserted subsection (9) substitute—
 - “(9) In this section—
 - “intended parent”, in relation to a child, means a person who, on the day of the child’s birth—
 - (a) applies, or intends to apply during the period of 6 months beginning with that day—
 - (i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or
 - (ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and
 - (b) expects the court to make such an order respect of the child.”.

Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations (Northern Ireland) 2015

11.—(1) The Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations (Northern Ireland) 2015(a) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in the appropriate place, insert—

““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

(a) applies, or intends to apply during the period of 6 months beginning with that day—

(i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or

(ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and

(b) expects the court to make an such order in respect of the child;”;

““section 54 parental order parent” means a person—

(a) on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of a child; or

(b) who is an intended parent of a child by reference to an application or intended application for such an order;

“section 54A parental order parent” means a person—

(a) on whose application the court has made an order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of a child; or

(b) who is an intended parent of a child by reference to an application or intended application for such an order.”; and

(b) omit the definition of “parental order parent”.

(3) In regulation 6 (application of the Pay Regulations to intended parents and parental order parents) for paragraph (1) substitute—

“(1) The provisions of the Pay Regulations, in so far as they apply to statutory paternity pay (adoption), shall apply to a section 54 parental order parent with the modifications set out in this Part of these Regulations.

(1A) The provisions of the Pay Regulations, in so far as they apply to statutory adoption pay, shall apply to—

(a) a section 54 parental order parent; and

(b) a section 54A parental order parent,

with the modifications set out in this Part of these Regulations.”.

(4) In regulation 7 (application of regulation 2 of the Pay Regulations)—

(a) in paragraph (a)(ii)—

(i) in the appropriate place, insert—

““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

(a) applies, or intends to apply during the period of 6 months beginning with that day—

(i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or

(a) S.R. 2015 No. 92.

- (ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and
 - (b) expects the court to make such an order in respect of the child;”;
 - (ii) in the definition of “Parent A”, for “the intended parent or parental order parent” substitute “the section 54 parental order parent”;
 - (iii) omit the definition of “parental order parent”; and
 - (iv) in the appropriate place, insert—
 - ““section 54 parental order parent” means a person—
 - (a) on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of a child; or
 - (b) who is an intended parent of a child by reference to an application or intended application for such an order;
 - “section 54A parental order parent” means a person—
 - (a) on whose application the court has made an order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of a child; or
 - (b) who is an intended parent of a child by reference to an application or intended application for such an order;”;
 - (b) in paragraph (b), in the substituted paragraph (2) for—
 - (i) “An intended parent or parental order parent” substitute “A section 54 parental order parent”; and
 - (ii) “the other intended parent or parental order parent” substitute “the other section 54 parental order parent”.
- (5) In regulation 8 (application of regulation 3 of the Pay Regulations), for “as they apply an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent”.
- (6) After regulation 8 insert—
- “8A.** Regulation 3 (application) of the Pay Regulations as they apply to a section 54A parental order parent shall read as if—
- (a) paragraph (1) were omitted; and
 - (b) for paragraph (2) there were substituted—
 - “(2) Subject to the provisions of Part 12ZB of the Act (statutory adoption pay) and of these Regulations, there is entitlement to statutory adoption pay in respect of children whose expected week of birth begins on or after the day which follows the last day of the period of 120 days beginning with the day on which the Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 comes into force.””.
- (7) In regulation 9 (application of regulation 11 of the Pay Regulations)—
- (a) for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent”; and
 - (b) in paragraph (a), in the inserted sub-paragraph (a), for “an intended parent or” substitute “a section 54”.
- (8) In regulation 10 (application of regulation 11A of the Pay Regulations) for “as they apply to an intended parent or a parental order parent” substitute “as they apply to a section 54 parental order parent”.
- (9) In regulation 11 (application of regulation 12 of the Pay Regulations), for “as they apply to an intended parent or parental order parent” substitute “as they apply to a section 54 parental order parent”.
- (10) In regulation 12 (application of regulation 13 of the Pay Regulations), for “as they apply to an intended parent or parental order parent” substitute “as they apply to a section 54 parental order parent”.

(11) In regulation 13 (application of regulation 14 of the Pay Regulations), for “as they apply to an intended parent or parental order parent” substitute “as they apply to a section 54 parental order parent”.

(12) In regulation 14 (application of regulation 15 of the Pay Regulations), for “as they apply to an intended parent or parental order parent” substitute “as they apply to a section 54 parental order parent”.

(13) In regulation 15 (application of regulation 16 of the Pay Regulations), for “as they apply to an intended parent or parental order parent” substitute “as they apply to a section 54 parental order parent”.

(14) In regulation 16 (application of regulation 20 of the Pay Regulations), for “as they apply to an intended parent or parental order parent” substitute as they apply to a section 54 parental order parent”.

(15) In regulation 17 (application of regulation 21 of the Pay Regulations), for “as they apply to an intended parent or parental order parent” substitute “as they apply to a section 54 parental order parent or a section 54A parental order parent”.

(16) In regulation 18 (application of regulation 22 of the Pay Regulations)—

- (a) for “as they apply to an intended parent or parental order parent” substitute “as they apply to a section 54 parental order parent”;
- (b) in paragraph (a), for paragraph (b) of the substituted paragraph (1) substitute—
 - “(b) the section 54 parental order parent who is entitled to statutory adoption pay does not apply for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child within the time limit set by subsection (3) of that section;”;
- (c) in paragraph (a), in paragraph (c) of the substituted paragraph (1), for “a parental order” substitute “an order under that section”;
- (d) in paragraph (b)(ii), in the substituted sub-paragraph (b), for “a parental order” substitute “an order under that section”; and
- (e) in paragraph (b)(iii), in the substituted sub-paragraph (c), for “a parental order” substitute “an order under that section”.

(17) After regulation 18, insert—

“**18A.** In regulation 22 (adoption pay period in cases where adoption is disrupted) of the Pay Regulations as they apply to a section 54A parental order parent—

(a) paragraph (1) shall apply as if that paragraph read—

“(1) The adoption pay period shall terminate in accordance with the provisions of paragraph (2) where—

- (a) the child dies;
- (b) the section 54A parental order parent does not apply for an order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of the child within the time limit set by subsection (2) of that section; or
- (c) the section 54A parental order parent’s application for an order under that section in respect of the child is refused, withdrawn or otherwise terminated and any time limit for an appeal or a new application has expired.”; and

(b) in paragraph (3)—

(i) sub-paragraph (a) shall apply as if the reference to paragraph (1)(a)(i) were a reference to paragraph (1)(a);

(ii) sub-paragraph (b) shall apply as if that sub-paragraph read—

“(b) in a case falling within paragraph (1)(b) the week during which the time limit in section 54A(2) of the Human Fertilisation and Embryology Act 2008 for an application for an order under that section for the child expires;”
; and

(iii) sub-paragraph (c) shall apply as if that sub-paragraph read—

“(c) in a case falling within paragraph (1)(c) the week during which the section 54A parental order parent’s application for an order under that section is refused, withdrawn or otherwise terminated without the order being granted.”.

(18) In regulation 19 (application of regulation 23 of the Pay Regulations), for “as they apply to an intended parent or parental order parent” substitute “as they apply to a section 54 parental order parent or a section 54A parental order parent”.

(19) In regulation 20 (application of regulation 24 of the Pay Regulations)—

(a) for “as they apply to an intended parent or parental order parent” substitute “as they apply to a section 54 parental order parent”; and

(b) in paragraph (b)—

(i) in paragraph (a) of the substituted paragraph (2), for “parental order” substitute “an order under that section”; and

(ii) in paragraph (b) of the substituted paragraph (2), for “parental order” substitute “an order under that section”.

(20) After regulation 20, insert—

“**20A.** For regulation 24 (evidence of entitlement to statutory adoption pay) of the Pay Regulations as they apply to a section 54A parental order parent substitute—

“**24.**—(1) A section 54A parental order parent shall provide evidence of his or her entitlement to statutory adoption pay by providing to the person who will be liable to pay it (“E”) a statutory declaration specified in paragraph (2) where E requests it in accordance with paragraph (3).

(2) The statutory declaration referred to in paragraph (1) is a statutory declaration stating that the person making the declaration—

(a) has applied, or intends to apply, under section 54A of the Human Fertilisation and Embryology Act 2008 for an order under that section in respect of the child within the time limit for making such an application; and

(b) expects the court to make an order under that section on that application in respect of the child.

(3) The declaration referred to in paragraph (1) shall be provided to E within 14 days of E requesting that declaration where E requests it within 14 days of receiving the notice under section 171ZL(6) of the Act.”.

(21) In regulation 21 (application of regulation 25 of the Pay Regulations), for “as they apply to an intended parent or parental order parent” substitute “as they apply to a section 54 parental order parent or a section 54A parental order parent”.

(22) In regulation 22 (application of regulation 29 of the Pay Regulations), for “as they apply to an intended parent or parental order parent” substitute “as they apply to a section 54 parental order parent or a section 54A parental order parent”.

(23) In regulation 23 (application of regulation 30 of the Pay Regulations), for “as they apply to an intended parent or parental order parent” substitute “as they apply to a section 54 parental order parent or a section 54A parental order parent”.

(24) In regulation 24 (application of regulation 40 of the Pay Regulations) for “as they apply to an intended parent or parental order parent” substitute “as they apply to a section 54 parental order parent or a section 54A parental order parent”.

(25) In regulation 26 (modification of the Administration Regulations in Parental Order cases), for “as those sections apply to an intended parent or to a parental order parent” substitute “as those sections apply to a section 54 parental order parent or a section 54A parental order parent”.

Employment Rights (Northern Ireland) Order 1996 (Application of Articles 107A, 107B, 107G, 107I, 112A and 112B to Parental Order Cases) Regulations (Northern Ireland) 2015

12.—(1) The Employment Rights (Northern Ireland) Order 1996 (Application of Articles 107A, 107B, 107G, 107I, 112A and 112B to Parental Order Cases) Regulations (Northern Ireland) 2015(a) are amended as follows.

(2) In regulation 1(2)—

(a) for the definition of “intended parent” substitute—

““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

(a) applies, or intends to apply during the period of 6 months beginning with that day—

(i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or

(ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and

(b) expects the court to make such an order in respect of the child;”;

(b) omit the definition of “parental order” and the “and” at the end of that definition;

(c) omit the definition of “parental order parent”; and

(d) in the appropriate place insert—

““section 54 parental order parent” means a person—

(a) on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of a child; or

(b) who is an intended parent of a child by reference to an application or intended application for such an order;”;

““section 54A parental order parent” means a person—

(a) on whose application the court has made an order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of a child; or

(b) who is an intended parent of a child by reference to an application or intended application for such an order.”.

(3) In regulation 2 for “parental order parents” substitute “section 54 parental order parents and section 54A parental order parents”.

(4) In regulation 3 for “parental order parents” substitute “section 54 parental order parents”.

(5) In regulation 4 for “parental order parents” substitute “section 54 parental order parents”.

(6) In Schedule 1, in the second column in the entry for section 1075G, in the insertion of Article (7), for “intended parent” to the end, substitute—

““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

(a) applies, or intends to apply during the period of 6 months beginning with that day—

(i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or

(ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and

(b) expects the court to make such an order in respect of the child; and

(a) S.R. 2015 No. 100.

“parental order” means an order under section 54 or 54A of the Human Fertilisation and Embryology Act 2008.”.

(7) In Schedule 2, in the second column in the entry for section 112B, in the insertion of subsection (7A), from “intended parent” to the end, substitute—

““intended parent” in relation to a child, means a person who, on the day of the child’s birth—

(a) applies, or intends to apply during the period of 6 months beginning with that day—

(i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or

(ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and

(b) expects the court to make such an order in respect of the child; and

“parental order” means an order under section 54 or 54A of the Human Fertilisation and Embryology Act 2008.”.

Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations (Northern Ireland) 2015

13.—(1) The Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations (Northern Ireland) 2015(a) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) for the definition of “intended parent” substitute—

““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

(a) applies, or intends to apply during the period of 6 months beginning with that day—

(i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or

(ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and

(b) expects the court to make such an order in respect of the child;”;

(b) omit the definition of “parental order”;

(c) omit the definition of “parental order parent”;

(d) in the appropriate place insert—

““section 54 parental order parent” means a person—

(a) on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of a child; or

(b) who is an intended parent of a child by reference to an application or intended application for such an order;

“section 54A parental order parent” means a person—

(a) on whose application the court has made an order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of a child; or

(b) who is an intended parent of a child by reference to an application or intended application for such an order;”.

(a) S.R. 2015 No. 101.

(3) For regulation 3 (application of the Leave Regulations to parental order parents), substitute—

“3.—(1) The provisions of the Leave Regulations, in so far as they apply to paternity leave (adoption) apply to section 54 parental order parents with the modifications set out in Part 2 of these Regulations.

(2) The provisions of the Leave Regulations, in so far as they apply to statutory adoption leave, apply to—

- (a) section 54 parental order parents; and
- (b) section 54A parental order parents,

with the modifications set out in Part 2 of these Regulations.”.

(4) In regulation 4 (application of the Curtailment Regulations to Parental Order Parents), after the second occasion the words “apply to” appear, insert “section 54”.

(5) In regulation 5 (application of the SPL Regulations to Parental Order Parents), after the second occasion the words “apply to” appear, insert “section 54”.

(6) In regulation 6 (application of regulation 2 of the Leave Regulations)—

(a) for “parental order parents” substitute “section 54 parental order parents and section 54A parental order parents”;

(b) in paragraph (a)(iii)—

(i) for the definition of “intended parent”, substitute—

““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

(a) applies, or intends to apply during the period of 6 months beginning with that day—

- (i) with another person for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child; or
- (ii) as the sole applicant for an order under section 54A of that Act in respect of the child; and

(b) expects the court to make such an order in respect of the child;”;

(ii) in the definition of “Parent A” after “means the” insert “section 54”;

(iii) omit the definitions of “parental order” and “parental order parent”;

(iv) in the relevant place insert—

““section 54 parental order parent” means a person—

(a) on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of a child; or

(b) who is an intended parent of a child by reference to an application or intended application for such an order;

“section 54A parental order parent” means a person—

(a) on whose application the court has made an order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of a child; or

(b) who is an intended parent of a child by reference to an application or intended application for such an order.”; and

(v) for the definition of “parental statutory declaration”, substitute—

““parental statutory declaration” means a statutory declaration stating that the person making the declaration—

(a) has applied, or intends to apply—

- (i) under section 54 of the Human Fertilisation and Embryology Act 2008 with another person; or

- (ii) under section 54A of that Act, alone,
 - for a parental order under that section in respect of the child within the time limit for making such an application; and
 - (b) expects the court to make an order under that section on that application in respect of the child;” and
 - (c) in paragraph (c), before the words “parental order parent” on each occasion they appear, insert “section 54”.
- (7) In regulation 7 (application of regulation 3 of the Leave Regulations) after “apply to” insert “section 54”.
- (8) After regulation 7, insert—
 - “**7A.** Regulation 3 (application) of the Leave Regulations as they apply to section 54A parental order parents shall read as if—
 - (a) paragraph (1) were omitted;
 - (b) the words of paragraph (2) were—
 - “The provisions in relation to adoption leave under regulation 15 have effect in relation to children whose expected week of birth begins on or after the last day of the period of 120 days beginning with the day on which the Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 comes into force.”; and
 - (c) in paragraphs (3) and (6), the words “8th December 2002” were “on or after the day on which the Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 comes into force”.
- (9) In regulation 8 (application of regulation 4 of the Leave Regulations), after “apply to” insert “section 54”.
- (10) In regulation 9 (application of regulation 8 of the Leave Regulations)—
 - (a) after “apply to” insert “section 54”; and
 - (b) in paragraph (d)(iii), in the substituted paragraph (d), for “is a parental order parent” substitute “is a section 54 parental order parent”.
- (11) In regulation 10 (application of regulation 9 of the Leave Regulations), after “apply to” insert “section 54”.
- (12) In regulation 11 (application of regulation 10 of the Leave Regulations)—
 - (a) after “apply to” insert “section 54”; and
 - (b) in paragraph (3)(c) of the substituted regulation 10, before “parental order” insert “section 54”.
- (13) In regulation 12 (application of regulation 11 of the Leave Regulations), after “apply to” insert “section 54”.
- (14) In regulation 13 (application of regulation 15 of the Leave Regulations)—
 - (a) after “apply to” insert “section 54”; and
 - (b) in paragraph (a), in the substituted paragraph (2)(a), before “parental order” insert “section 54”.
- (15) After regulation 13, insert—
 - “**13A.** In regulation 15 (entitlement to ordinary adoption leave) of the Leave Regulations, as they apply to section 54A parental order parents—
 - (a) paragraph (1)(a) shall read as if the word “conditions” were “condition”;
 - (b) paragraph (2) shall read as if the words of that paragraph were—
 - “The condition referred to in paragraph (1) is that the employee is a child’s section 54A parental order parent.”; and
 - (c) paragraph (4) shall read as if the words of that paragraph were—

“An employee’s entitlement to leave under this regulation shall not be affected by the birth or expected birth of more than one child as a result of the same pregnancy.”

(16) In regulation 14 (application of regulations 16 and 17 of the Leave Regulations), for “parental order parents” substitute “section 54 parental order parents and section 54A parental order parents”.

(17) In regulation 15 (application of regulation 18 of the leave regulations), for “parental order parents” substitute “section 54 parental order parents and section 54A parental order parents”.

(18) In regulation 16 (application of regulation 20 of the Leave Regulations), after “apply to” insert “section 54”.

(19) After regulation 16, insert—

“**16A.** In regulation 20 (additional adoption leave: entitlement duration and commencement) of the Leave Regulations as they apply to section 54A parental order parents, paragraph (1)(a) shall read as if the words of that sub-paragraph were “the employee is a section 54A parental order parent in respect of that child.””.

(20) In regulation 17 (application of regulation 22 of the Leave Regulations)—

(a) after “apply to” insert “section 54”;

(b) in paragraph (a) in the substituted paragraph (1) for sub-paragraphs (a) to (c) substitute—

“(a) the employee does not apply for an order under section 54 of the Human Fertilisation and Embryology Act 2008 within the time limit set by subsection (3) of that section; and

(b) the employee’s application for an order under that section for the child is refused, withdrawn or otherwise terminated without the order being granted and any time for an appeal or a new application has expired; or

(c) the child dies.”;

(c) in paragraph (b)(i) for “a parental order” substitute “an order under that section”; and

(d) in paragraph (b)(ii) for “a parental order” substitute “an order under that section”.

(21) After regulation 17, insert—

“**17A.** In regulation 22 (disrupted placement in the course of adoption leave) of the Leave Regulations as they apply to section 54A parental order parents—

(a) paragraph (1) shall read as if the words of that paragraph were—

“This regulation applies where—

(a) the employee does not apply for an order under section 54A of the Human Fertilisation and Embryology Act 1998 within the time limit set by subsection (2) of that section,

(b) the employee’s application for an order under that section for the child is refused, withdrawn or otherwise terminated without the order being granted and any time limit for an appeal or new application has expired; or

(c) the child dies.”;

(b) paragraph (3) shall read as if—

(i) in paragraph (a), the words from “the person with whom” to the end were “the time limit in section 54A(2) of the Human Fertilisation and Embryology Act 2008 for an application for an order under that section for the child expires.”;

(ii) in paragraph (b), the words “paragraph (1)(b)(i)” to the end were “paragraph (1)(b), the week in which the employee’s application for an order under that section is refused, withdrawn or otherwise terminated without the order being granted.”;

(iii) in paragraph (c), the words “paragraph (1)(b)(ii)” to the end were “paragraph (1)(c), the week during which the child dies”; and

(c) paragraph (3A) shall be treated as omitted.”.

(22) In regulation 18 (application of regulation 2 of the Curtailment Regulations) after “apply to” insert “section 54”.

(23) In regulation 19 (application of regulation 3 of the Curtailment Regulations) after “apply to” insert “section 54”.

(24) In regulation 20 (application of regulation 2 of the SPL Regulations) after “apply to” insert “section 54”.

(25) In regulation 21 (application of regulation 3 of the SPL Regulations)—

(a) after “apply to” insert “section 54”; and

(b) in paragraph (c) in the appropriate place, insert—

““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

(a) applies, or intends to apply during the period of 6 months beginning with that day, with another person for a parental order in respect of the child; and

(b) expects the court to make a parental order on that application in respect of the child;”;

““parental order” means an order under section 54(1) of the Human Fertilisation and Embryology Act 2008;”.

(26) In regulation 22 (application of regulation 20 of the SPL Regulations), after “apply to” insert “section 54”.

(27) In regulation 23 (application of regulation 21 of the SPL Regulations), after “apply to” insert “section 54”.

(28) In regulation 24 (application of regulation 23 of the SPL Regulations), after “apply to” insert “section 54”.

(29) In regulation 25 (application of regulation 24 of the SPL Regulations), after “apply to” insert “section 54”.

(30) In regulation 26 (application of regulation 25 of the SPL Regulations) after “apply to” insert “section 54”.

(31) In regulation 27 (application of regulation 26 of the SPL Regulations), for the first occasion that the words “parental order” appear, substitute “section 54 parental order”.

(32) In regulation 28 (application of regulation 28 of the SPL Regulations), after “apply to” insert “section 54”.

(33) In regulation 29 (application of regulation 32 of the SPL Regulations), after “apply to” insert “section 54”.

(34) In regulation 30 (application of regulation 34 of the SPL Regulations), after “apply to” insert “section 54”.

(35) In regulation 31 (application of regulation 35 of the SPL Regulations), after “apply to” insert “section 54”.

(36) In regulation 32 (application of regulation 36 of the SPL Regulations), after “apply to” insert “section 54”.

(37) In regulation 33 (application of the Schedule to the SPL Regulations), after “apply to” insert “section 54”.

Human Fertilisation and Embryology (Mitochondrial Donation) Regulations 2015

14.—(1) The Human Fertilisation and Embryology (Mitochondrial Donation) Regulations 2015(a) are amended as follows.

(a) S.I. 2015/572.

(2) In regulation 10 (modification of certain enactments for cases where mitochondrial donation has occurred) for “18” substitute “18A”.

(3) After regulation 18 insert—

“Modification of section 54A of the Human Fertilisation and Embryology Act 2008

18A. In a case where this regulation has effect, section 54A of the Human Fertilisation and Embryology Act 2008 applies as if after subsection (1) there were inserted—

“(1A) For the purposes of this section, neither of the following is to be treated as a person whose gametes were used to create an embryo (“embryo E”)—

- (a) where embryo E is a permitted embryo by virtue of regulations under section 3ZA(5) of the 1990 Act, the person whose mitochondrial DNA (not nuclear DNA) was used to bring about the creation of embryo E;
- (b) where embryo E has been created by the fertilisation of an egg which was a permitted egg by virtue of regulations under section 3ZA(5) of the 1990 Act, the person whose mitochondrial DNA (not nuclear DNA) was used to bring about the creation of that permitted egg.””.

Judicial Pensions (Fee-paid Judges) Regulations 2017

15.—(1) The Judicial Pensions (Fee-paid Judges) Regulations 2017(a) are amended as follows.

(2) For paragraph (9) of regulation 40 (meaning of “eligible child”) substitute—

“(9) In this regulation, “parental order” means an order made under section 54 or 54A of the 2008 Act.”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is a remedial order made under section 10 of the Human Rights Act 1998. Its purpose is to remedy the incompatibility of section 54 of the Human Fertilisation and Embryology Act 2008 with the Convention Rights. Section 54 was found to be incompatible with those rights by the Court since the availability of a parental order under that section was limited to two people in a relationship akin to marriage. A parental order is an order which the court may make conferring parental responsibility on a person whose biological material has been used in the course of surrogacy arrangements.

This Order provides that one person may apply for a parental order and makes provision consequential on that change.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary of public sector is foreseen.

(a) S.I. 2017/522.

