



The Government's Response to an incompatibility in the Human Fertilisation & Embryology Act 2008: A remedial order to allow a single person to obtain a parental order following a surrogacy arrangement.

Presented to Parliament
by the Secretary of State for Health
by Command of Her Majesty

November 2017

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The Government's Response to an incompatibility in the Human Fertilisation & Embryology Act 2008: A remedial order to allow a single person to obtain a parental order following a surrogacy arrangement.

1. Introduction

1.1. This command paper presents a draft remedial order (RO) to Parliament, which includes an explanation of the incompatibility and the relevant ruling, a statement of the reasons for making the change by RO and a statement explaining the terms of the RO. The draft RO extends across the United Kingdom.

2. The incompatibility and the relevant ruling

Introduction

2.1 Surrogacy is when a woman carries a baby for someone who is unable to conceive or carry a child themselves. When a child is born under a surrogacy arrangement, the intended parents of the child may apply to a court for a parental order, which, if granted, would transfer the legal parenthood of the child to the intended parents. The effect of a parental order is that the child born to the surrogate is treated in law as the child of the applicants for the parental order, and that any parental rights of the surrogate and her partner are extinguished. The order operates like a speeded up form of adoption and must be applied for through the family court in England and Wales, through the Court of Session or Sheriff Court in Scotland and through the Courts & Tribunals Service in Northern Ireland.

2.2 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 life-styles are much more diverse.

Background - surrogacy arrangements

2.3 The Surrogacy Arrangements Act 1985 (“the 1985 Act”) regulates certain activities in connection with arrangements that relate to agreements for a woman to carry a child as a surrogate mother. The 1985 Act sets out that it is lawful to enter into a surrogacy arrangement in the UK, but it is not enforceable in law. Further, the 1985 Act prohibits the negotiation (and other related activities) of surrogacy arrangements on a commercial basis, although permits non-profit making bodies to assist in making surrogacy arrangements and recovering certain reasonable costs for doing so. The 1985 Act also governs advertisements for surrogacy and sets out that it is a criminal offence under the 1985 Act to advertise that you are willing to act as a surrogate, are looking for a surrogate, or are a third party willing to negotiate a surrogacy arrangement (although there are some exceptions for not for profit organisations).

Background – transfer of legal parenthood

2.4 Provisions in the Human Fertilisation and Embryology Act 1990 (“the 1990 Act”) allowed, where a child was born under a surrogacy arrangement, for the transfer of legal parenthood from the birth mother to the intended parents by means of a parental order. Under the 1990 Act, the court only had the power to grant parental orders to married heterosexual couples.

2.5 The Human Fertilisation and Embryology Act 2008 (“the 2008 Act”) introduced new provisions to extend eligibility for parental orders following a surrogacy arrangement to reflect broader changes in social policy. Under that Act, a court was given the extended power to grant a parental order to civil partners and couples in long-term relationships where the relevant criteria were satisfied. The Marriage (Same Sex Couples) Act 2013, the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (SI 2014/3229) later amended the 2008 Act to include same sex married couples.

2.6 The changes in law in relation to surrogacy arrangements have all been focussed on couples and under the current law, a court may not grant a parental order to a single applicant. The intention was that an individual seeking to acquire legal parenthood of a child born under a surrogacy arrangement would have to adopt the child. The rationale at that time was that the fuller assessment carried out in adoption proceedings was more likely to ensure that a person on their own was able to cope with the demands of bringing up a child. This has been further considered as policy develops and the Government now consider that the court assessment of the parental order application, which is always made with the best interests of the child in mind, is the appropriate assessment in the circumstances.

The legal challenge

2.7 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.

2.8 The applicant then brought a challenge under the Human Rights Act, alleging that the provisions of the 2008 Act were in breach of Articles 8 and 14 of the European Convention on Human Rights ("ECHR") in not allowing parental orders for a single person. The Secretary of State for Health was a party to the challenge and conceded that there was a breach of Article 14 (but not Article 8). This recognises the evolving domestic and European Court of Human Rights case law in this area.

2.9 On 20 May 2016, the Family Court made a declaration (*Neutral Citation Number: [2016] EWHC 1191 (Fam)*) that the provision in the Human Fertilisation & Embryology Act 2008 which enable couples, but not a single person, to obtain a parental order following surrogacy is incompatible with Article 14 of the European Convention on Human Rights. 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 person's status, and it was accepted that this could include a single person in this context.

2.10 The Government will now introduce legislation to reflect an equal approach for a single person and couples in obtaining legal parenthood after a surrogacy arrangement. Following consideration of possible legislative options, the Government considers that there are compelling reasons to amend the 2008 Act by Order made under the power in section 10 of the Human Rights Act 1998 to take remedial action where the court has made a declaration of incompatibility with Convention Rights. The Government also proposes to bring forward a new set of parental order regulations alongside the remedial order (as provided for under the 2008 Act) to apply adoption legislation to parental orders, and extend these provisions to applications by a single person.

3. The reasons for making the change by remedial order

3.1 The Government has considered whether there are any alternative options to address the incompatibility in good time.

3.2 Remedial orders are specifically designed for addressing incompatibilities. As the incompatibility is contained within primary legislation, the options available to address the incompatibility are to introduce a Bill or to proceed with a remedial order under section 10 of the Human Rights Act 1998. The Department considers that the affirmative Parliamentary process to consider and approve a remedial order, would allow Parliament the opportunity to properly scrutinise the changes to legislation and remedial action taken, but would impose less of a burden on Parliamentary time than a Bill. This would also enable the incompatibility to be addressed at the earliest opportunity and enable a narrow focus on the key issue.

3.3 As part of this analysis, the Department considered whether it is possible to bring forward legislation in a Bill but it was judged that were no other appropriate legislative vehicles currently planned by the Government that could accommodate this particular legal objective, taking account of scope and territorial reach.

3.4 A short bespoke Human Fertilisation & Embryology Bill with limited scope to address only Parental Orders issues was also considered. However, Parliamentary time would be constrained and, even with a limited scope, such a Bill would give the opportunity to re-open other provisions in the 2008 Act through amendments, which could undermine the intentions of the Bill and lead to debate on different issues long settled by the UK Parliament.

3.5 The Government welcomes the opportunity to lay this remedial order to allow a single person the same rights to gain legal parenthood as couples. The order will allow a six month period where an existing single parent through surrogacy can retrospectively apply for a parental order.

3.6 The Government has also recently announced its intention to support the proposal by the Law Commission for England and Wales to undertake a broader review of surrogacy legislation and policy. While this review could have included this particular issue, the project is set to take at least 2-3 years to reach recommendations and potential draft legislation. This was considered too long a wait for the incompatibility to be addressed. The proposed review will therefore be undertaken by the Law Commission for England and Wales but with access to parental orders for a single person as a set policy position.

4. The terms of the remedial order.

4.1 Provisions for the application and award of parental orders, to transfer legal parenthood following surrogacy, are to be found in Section 54 of the Human Fertilisation & Embryology Act 2008. The draft remedial order replicates the functions of Section 54, which covers an application made by two people, with a new Section 54A for 'one applicant'.

4.2 Schedule 1 to the order contains consequential amendments to other related primary legislation. Schedule 2 contains consequential amendments to subordinate legislation. Other consequential amendments to secondary legislation are planned for re-made Human Fertilisation and Embryology Parental Order Regulations. It was regarded as too complex and unwieldy to include these in the remedial order. Our intention is that draft regulations will be laid before Parliament next year.

4.3 Section 54A

Article 1 of the order sets out the citation of the order and when it is due to come into force. It also provides some interpretation provisions in relation to legislation referred to in the order.

Article 2 of the order contains the amendments to the Human Fertilisation and Embryology Act 2008. In particular, article 2(2) of the order amends the existing heading of section 54 so that it is clear this section is concerned only with parental order applications for couples.

Article 2(4) inserts a new subsection into section 54 to make it clear that only one parental order application in respect of a child can be accepted, whether it is a couple or a single person making that application. It should be noted that under the provisions set out in new section 54A, which is inserted by article 2(5) of the order, two applications from two single people in respect of the same child cannot be made (see s54A(11)).

Article 2(5) inserts the new section 54A covering parental order applications made by a single person.

New section 54A(1) of the remedial order supports the enduring policy position that an applicant for a parental order must be genetically related to the child born through the surrogacy arrangement. As there is only one applicant in this new provision, that applicant must be genetically related. (In the case of couples, only one member of the applicant couple needs to be genetically related.) Under new section 54A(1), in the case of a male single applicant, this means his sperm must have been used to fertilise the egg and produce an embryo (either by artificial insemination or via in-vitro fertilisation techniques); in the case of a female single applicant, this means that her eggs must have been used to produce the embryo, which was then placed in the surrogate mother by means of in-vitro fertilisation techniques.

Subsection (2) of the new s54A sets out the condition that to qualify as a single applicant for the purposes of this legislation, the applicant must not be married, in a civil partnership or in an enduring family relationship (such as living together as if spouses of each other). This condition is subject to exemptions, which are covered in s54A(3)-(4).

Subsection (3) of the new s54A sets out the exemptions to the condition that a single applicant cannot be married or in a civil partnership. These conditions are based on exemptions within the Adoption Act 2002. These are that the partner cannot be found, the partners are living separately or that the other partner does not have capacity to make the application.

Subsection (4) of the new s54A sets out an exemption to the condition that a single applicant cannot be in an enduring family relationship. This exemption is that the other partner does not have capacity to make the application.

Subsection (5) of the new s54A mirrors the provision in section 54(3) that the application must be made within 6 months of the birth of the child.

Subsection (6) of the new s54A mirrors the provisions of section 54(4) that the child must be living with the applicant in their home, and must be domiciled in the UK, the Channel Islands or the Isle of Man.

Subsection (7) of the new s54A mirrors the provisions of section 54(5) that the applicant must be 18 or over at the time of the application.

Subsection (8) of the new s54A mirrors the provisions of section 54(6) that the surrogate mother, and her partner if she is married, in a civil partnership or the relevant fatherhood or parenthood conditions are satisfied, must have given informed and unconditional consent for the parental order to be made and for their legal parenthood to be extinguished.

Subsection (9) of the new s54A mirrors the provisions of section 54(7) that provide an exemption to the consent provisions if the person required to give consent (i.e. the surrogate and/or her partner if applicable) cannot for the reasons specified be found or give effective consent. The provision also sets out that a surrogate's consent is ineffective if she has given it less than six weeks after giving birth to the child.

Subsection (10) of the new s54A mirrors the provisions of section 54(8) that the court must be satisfied that any payments or benefits given by or to the applicant (e.g. to or from the surrogate mother) are not a payment for the making of the parental order, the giving of consent, handing the child over, or making arrangements with a view to making the order. The provision sets out that reasonable expenses and other payments authorised by the court are permitted.

Subsection (11) of the new s54A replicates the new provision in section 54(8A), which was inserted by article 2(4) of the order, that only one parental

order can be made, unless the previous order no longer applies because it was quashed by the court or an appeal against the order had been allowed.

Subsection (12) of the new s54A sets out that s54(9) applies for the purposes of an application under s54A. Section 54(9) sets out the meaning of “the court” for the purposes of an application for a parental order under s54 or s54A.

Subsection (13) of the new s54A mirrors the provisions of section 54(10) to clarify that the legislative provisions apply to a surrogacy that began in the UK or overseas.

Subsection (14) of the new s54A permits for applications for parental orders in respect of children born before the remedial order comes into force to be made for a period of six months from the date that new section 54A comes into force.

Subsection (15) of the new s54A clarifies that, for the purposes of section 54A, references to the applicant and a partner living together in an “enduring family relationship” refer to cases where the applicant and the other person are not within prohibited degrees of relationship to each other. Section 58(2) of the Human Fertilisation and Embryology Act 2008 sets out that for the purposes of Part 2 of that Act (which includes new s54A), two people are within prohibited degrees of relationship if one is the other’s parent, grandparent, sibling (including half-siblings), aunt or uncle. Two people are also within prohibited degrees of relationship if they would be related in any of the ways listed but for one of them having been adopted. Further a child and his adoptive or former adoptive parents are also within prohibited degrees of relationship. Subsection (15) of new s54A clarifies that, for instance, an applicant who lives in her home with her sister, parent, or child is not prohibited from applying for a parental order as a single person. The courts, when considering an application for a parental order, may consider the appropriateness of any living arrangements.

4.4 Schedule 1 amendments

The amendments in Schedule 1 to the Remedial Order are consequential on the Order coming into force, and are limited to necessary changes to primary legislation arising from the enactment of section 54A of the Human Fertilisation and Embryology Act 2008, both in Great Britain and in Northern Ireland. The purpose of the amendments is to ensure parity in the way applicants for and holders of section 54 parental orders and section 54A parental orders are treated under relevant primary legislation. This includes extending certain powers to make secondary legislation to cases involving a parental order under section 54A (as to the effect of which see the summary of Schedule 2 amendments).

The amendments fall within the following four categories:

- (i) amendments to primary legislation governing employment and benefits, namely:
 - a. the Employment Rights Act 1996 and the Employment Rights (Northern Ireland) Order 1996 (the “Employment Rights Acts”);
 - b. the Social Security Act 1989 and the Social Security (Northern Ireland) Order 1989 (the “1989 Social Security Acts”);
 - c. the Child Support Act 1991 and the Child Support (Northern Ireland) Order 1991 (the “Child Support Acts”); and
 - d. the Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (the “1992 Social Security Acts”);
- (ii) amendments to primary legislation governing the procedure for making orders regarding parentage or related to the parental relationship, such as orders in relation to support, guardianship, occupation and domestic abuse. The relevant legislation is:
 - a. the Senior Courts Act 1981;
 - b. the Human Fertilisation and Embryology Act 1990;
 - c. the Children (Scotland) Act 1995;
 - d. the Children (Northern Ireland) Order 1995; and
 - e. the Family Law Act 1996 and the Family Homes and Domestic Violence (Northern Ireland) Order 1998;
- (iii) amendments to legal aid provisions in primary legislation that relate to the existence of a family relationship (the Legal Aid, Sentencing and Punishment of Offenders Act 2012); and
- (iv) amendments to primary legislation which allows for the creation of secondary legislation in relation to mitochondrial donation (the Human Fertilisation and Embryology Act 1990).

Some of the amendments to the Employment Rights Acts and all of the amendments to the 1989 Social Security Acts relate to the availability of adoption leave to applicants for section 54A parental orders.

The provisions in the 1989 Social Security Acts provide guidance for judging whether an employment-related benefit scheme complies with the principle for equal treatment, and in particular whether the scheme contains any unfair adoption leave provisions. Applicants for section 54 parental orders who are undertaking paid adoption leave are currently covered by the unfair adoption leave provisions; the amendment extends this to applicants for section 54A parental orders.

The amendments to sections 75A and 75B of the Employment Rights Act 1996 and to Articles 107AC and 107BA of the Employment Rights (Northern Ireland) Order 1996 respectively provide the Secretary of State in Great Britain and the Department of Economic Development in Northern Ireland with the power to make regulations applying ordinary and additional adoption leave provisions to applicants for section 54A parental orders. This power mirrors that which is currently available in relation to section 54 parental orders. See Schedule 2 below for information on how these powers are applied.

The other amendments to the Employment Rights Acts also mirror those currently applicable to applicants for section 54 parental orders. These amendments grant applicants for section 54A parental orders who are eligible employees certain rights to time off work to attend ante-natal appointments with the woman pregnant with the child in respect of whom the section 54A order is being made.

The relevant provisions of the Child Support Acts relate to the provision of child support maintenance. The amount of child support maintenance an individual should be paying towards his or her child is calculated under the Child Support Acts by means of a maintenance assessment or maintenance calculation. Section 26(2) of the Child Support Act 1991 and section 27(2) of the Child Support (Northern Ireland) Order 1991 state that, for the purpose of making a maintenance assessment/calculation, an individual who is a parent of a child by virtue of a section 54 parental order may be assumed to be the child's parent. The amendments to these provisions allow the same assumption to be made for individuals who are parents by virtue of section 54A parental orders.

The 1992 Social Security Acts include the power to make secondary legislation which extends the right to statutory adoption pay to those who have applied for section 54 parental orders. The amendments extend this to apply to applicants for section 54A parental orders. Please see Schedule 2 below for information on how these powers are applied.

The amendment to the Senior Courts Act 1981, Schedule 1, paragraph 3(f)(iv) extends the jurisdiction of the Family Division to grant parental orders to include parental orders under the new section 54A.

The amendment to s33A(2)(q)(f) of the Human Fertilisation and Embryology Act 1990 allows the release of certain medical information to the extent that it is necessary to establish in proceedings that a section 54A parental order should be made.

The relevant provisions in the Children (Scotland) Act 1995 relate to the ability of the Court of Session or the sheriff court in Scotland to make an order imposing parental responsibilities on an individual. Currently under section 11(4)(c) of the Act, these courts are unable to make an order imposing parental responsibilities, parental rights, guardianship, or the administration of a child's property on an individual whose parental rights in relation to the child in question were extinguished by a section 54 parental order. The amendment to this provision will extend this to those whose rights were extinguished by a section 54A parental order.

Article 8(4)(g) of the Children (Northern Ireland) Order 1995 defines the type of proceedings in which the court of Northern Ireland can make certain orders in relation to contact with a child, prohibited steps, the residence of a child and determining specific issues in relation to the child. One such type of proceeding in which the Court of Northern Ireland can make these orders is a section 54 proceeding; the amendment will extend this to apply to section 54A proceedings.

The amendments to section 63(2)(h) of the Family Law Act 1996 and Article 2(3)(f) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 allow occupation orders and non-molestation orders to be made as part of section 54A proceedings, as they can currently be as part of section 54 proceedings.

The amendment to paragraph 12(9) of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 relates to the cover provided by civil legal aid in cases of domestic violence where there is a 'family relationship' between the accuser and the accused. According to the provision, a 'family relationship' may be established where a section 54 parental order exists. The amendment extends this definition so that a family relationship will also be established where a section 54A parental order exists.

Section 35A(2)(b)(g) of the Human Fertilisation and Embryology Act 1990 relates to the power of the Secretary of State to make secondary legislation which extends parental orders to cover mitochondrial donation (eggs or embryos created from material provided by two women). This power currently exists in relation to section 54 parental orders; the amendment extends it so that it also covers section 54A parental orders.

4.4 Schedule 2 amendments

The purpose of the amendments in Schedule 2 to the Remedial Order is to ensure that once the new section 54A of the Human Embryology and Fertilisation Act 2008 comes into force, equivalent provision in areas including access to benefits and employment rights is made for applicants for a parental order under section 54A as currently applies to applicants for an order under section 54. All of the amendments contained in Schedule 2 are made by virtue of the power to make the remedial order, that is section 10 of the Human Rights Act 1998. The amendments in Schedule 2 are to subordinate legislation only, but those amendments apply to legislation which extends to Great Britain, with equivalent provision being made for Northern Ireland.

The amendments and modifications in Schedule 2 to the Order, for the purposes of this note, fall into two categories:

(I) amendments and modifications to statutory instruments which govern the payment of adoption leave, paternity leave, and shared parental leave. The instruments in question are:

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

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

(II) amendments and modifications to statutory instruments which govern the payment of benefits relating to adoption leave. The instruments in question are:

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

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

The Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014 (“the ERA Parental Order Regulations”) apply and modify existing powers in the Employment Rights Act 1996 (“ERA”) to allow the Government to make regulations which will give an employee that meets the eligibility criteria entitlement to statutory adoption leave, paternity leave and shared parental leave if that employee has a child born with the help of a surrogate and the employee is a parental order parent.

The ERA Parental Order Regulations already apply to section 54 parental order parents, but provision made in schedule 2 to this Order extends the

ERA Parental Order Regulations such that they will apply to section 54A parental order parents. However, it is to be noted that section 54A parental order parents will only be entitled to statutory adoption leave, since paternity leave and shared parental leave are only available in circumstances where there are to be two parents of the same child. In a section 54A parental order case, there will only ever be one parent.

The Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014 (“the Parental Order Parental Leave Regulations”) are made using these applied and modified powers. The Parental Order Parental Leave Regulations make the necessary amendments to the Paternity and Adoption Leave Regulations 2002 (“the 2002 Regulations”), the Maternity and Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations 2014 (“Curtailed Regulations”) and the Shared Parental Leave Regulations 2014 (“the SPL Regulations”) to provide an entitlement to adoption, paternity and shared parental leave to qualifying parental order parents.

The effect of the amendments in schedule 2 to the Remedial Order to the Parental Order Parental Leave Regulations is to extend entitlement to adoption leave pay to a section 54A parental order parent. The amendments also make clear that there is no entitlement to paternity leave or shared parental leave pay where a person applies for a parental order under section 54A.

The Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA, 12ZB and 12ZC to Parental Order Cases) Regulations 2014 make the necessary modifications to the requirements in the Social Security Contributions and Benefits Act 1992, to provide that a person may be entitled to statutory adoption pay, statutory paternity pay or shared parental pay when applying for a parental order section 54 of the Human Fertilisation and Embryology Act 2008.

Those Regulations modify the powers in Parts 12ZA, 12ZB and 12ZC and originally allowed the Government to make Regulations to provide an entitlement to statutory paternity pay, statutory adoption pay, and statutory shared parental pay in cases where a person has applied for a parental order under section 54A of the Human Fertilisation and Embryology Act 2008.

The Remedial Order extends those modifications to include cases where a person applies for an Order under section 54A of the 2008, but only to the extent that such a person might be entitled to statutory adoption pay (the effect of the modifications taken as a whole is that there is no entitlement to paternity pay or statutory shared parental pay in a case where a person applies for an order under section 54A of the Human Fertilisation and Embryology Act 2008).

The Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations 2014 (“the Regulations”) modify and amend the Statutory Paternity Pay and Statutory Adoption Pay Regulations (General) 2002. Those Regulations originally permitted section 54 parental order parents to benefit from certain adoption-related pay benefits, through modifications to the Statutory Paternity Pay and Statutory Adoption Pay Regulations (General) 2002. Provision in Schedule 2 extends the availability of statutory adoption pay to a person who applies for an order under section 54A of the 2008 Act.

Annex A: The remedial order

Draft Order laid before Parliament under paragraph 3(1)(a) of Schedule 2 to the Human Rights Act 1998 and subsequently under paragraph 2(a) of that Schedule, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

HUMAN FERTILISATION AND EMBRYOLOGY

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

Made - - - - *****

Coming into force in accordance with article 1(1)

Section 54(1) and (2) of the Human Fertilisation and Embryology Act 2008⁽¹⁾ have been declared to be incompatible with a Convention right under section 4 of the Human Rights Act 1998⁽²⁾.

The time for bringing an appeal has expired and no appeal was made within that time.

The Secretary of State considers that there are compelling reasons for proceeding by way of a remedial order⁽³⁾ to make such amendments to the Human Fertilisation and Embryology Act 2008 as are necessary to remove that incompatibility.

In accordance with paragraph 2(a) of Schedule 2 to the Human Rights Act 1998⁽⁴⁾, a draft of this instrument was laid before Parliament and was approved by resolution of each House of Parliament, a document containing a draft of this instrument having previously been laid before Parliament in accordance with paragraph 3(1) of that Schedule.

Accordingly, the Secretary of State makes the following Order in exercise of the powers conferred by section 10(2) of, and paragraph 1(1)(a), (c) and (d), (2) and (3) of Schedule 2 to, the Human Rights Act 1998:

Citation, commencement and extent

—(1) This Order may be cited as the Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 and comes into force 14 days after the day on which it is made.

Any amendment made by this Order has the same extent as the provision which it amends.

(1) 2008 c. 22.

(2) 1998 c. 42. Section 4 has been amended by paragraph 66(2) of Schedule 9 to the Constitutional Reform Act 2005 (c. 4); paragraph 156 of Schedule 16 to the Armed Forces Act 2006 (c. 52); paragraph 43 of Schedule 6 to the Mental Capacity Act 2005 (c. 9) and paragraph 5(5) of Schedule 14 to the Crime and Courts Act 2013 (c. 22);

(3) A remedial order is an order made by statutory instrument under section 10 of the Human Rights Act 1998 remedying an acknowledged incompatibility with a Convention right.

(4) Schedule 2 has been amended by S.I. 2000/2040.

Amendments to the Human Fertilisation and Embryology Act 2008

—(2) The Human Fertilisation and Embryology Act 2008 is amended as follows.

In the heading of section 54 (parental orders) at the end insert “: two applicants”.

In subsection (1)(c) of that section, for “(8)” substitute “(8A)”.

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.”.

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, or
- (b) the gametes of the applicant were used to bring about the creation of the embryo, and
- (c) the conditions in subsections (2) to (11) are satisfied.

(2) At the time of the application the applicant must not be—

- (a) married or a civil partner (subject to subsection (3)), or
- (b) living as the partner of another person in an enduring family relationship (subject to subsection (4)).

(3) The applicant may be married or a civil partner if the court is satisfied that—

- (a) the applicant’s spouse or civil partner cannot be found,
- (b) the spouses or civil partners have separated and are living apart and the separation is likely to be permanent, or
- (c) the applicant’s spouse or civil partner is by reason of ill-health, whether physical or mental, incapable of making an application with the applicant for an order under section 54.

(4) The applicant may be living as the partner of another person in an enduring family relationship if the court is satisfied that the person is by reason of ill-health, whether physical or mental, incapable of making an application with the applicant for an order under section 54.

(5) Except in a case falling within subsection (14), the applicant must apply for the order during the period of 6 months beginning with the day on which the child is born.

(6) 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.

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

(8) 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.

(9) Subsection (8) 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.

(10) 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 (8),
- (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.

(11) 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.

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

(13) 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.

(14) 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 the section comes into force.

(15) References in this section to the applicant living as the partner of another person in an enduring family relationship are to a case where the applicant and the person are not within prohibited degrees of relationship to each other.”.

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

Consequential amendments

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

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

Date

Name
Minister of State for Health
Department of Health

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(5) (assignment of business of High Court to the Family Division) after “section 54” insert “or 54A”.

Social Security Act 1989

In Schedule 5 to the Social Security Act 1989(6) (employment-related schemes for pensions or other benefits: equal treatment for men and women), in paragraph 5B(8)(b)(7) after “section 54” insert “or 54A”.

Social Security (Northern Ireland) Order 1989

In Schedule 5 to the Social Security (Northern Ireland) Order 1989(8) (employment-related schemes for pensions or other benefits: equal treatment for men and women), in paragraph 5B(8)(b)(9) after “section 54” insert “or 54A”.

Human Fertilisation and Embryology Act 1990

—(1) The Human Fertilisation and Embryology Act 1990(10) is amended as follows.

In section 33A(2)(q)(11) (disapplication of prohibition on disclosing information) after “section 54” insert “or subsection (1) of section 54A”.

In section 35A(2)(b)(12) (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

In section 26(2) of the Child Support Act 1991(13) (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

In Article 27(2) of the Child Support (Northern Ireland) Order 1991(14) (cases in which assumptions may be made about a child’s parentage), in Case B, after “section 54” insert “or 54A”.

(5) 1981 c. 54.

(6) 1989 c. 24.

(7) 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.

(8) N.I. 13

(9) 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).

(10) 1990 c. 37.

(11) 1990 c. 37; section 33A was inserted by section 25 of the Human Fertilisation and Embryology Act 2008 (c. 22).

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

(13) 1991 c. 48; section 26 has been amended by paragraph 31(1) and (2) of Schedule 7 to the Social Security Act 1998 (c. 14); section 1(2)(a), section 15(1); paragraphs 11 and 12 of Schedule 8 and part 9 of Schedule 9 to the Child Support, Pensions and Social Security Act 2000 (c. 19); paragraph 81 of Schedule 3 to the Adoption and Children Act 2002; paragraph 7 of Schedule 2 to the Adoption and Children (Scotland) Act 2007; paragraph 36 of Schedule 6 to the Human Fertilisation and Embryology Act 2008; Schedule 8 to the Child Maintenance and Other Payments Act 2008 (c. 6); S.I. 1995/756; S.I. 2012/2007; and from a date to be appointed by paragraph 23 of Schedule 6 to the Welfare Reform Act 2009 (c. 24)

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

Social Security Contributions and Benefits Act 1992

—(2) In section 171ZT (power to apply Part 12ZB) of the Social Security Contributions and Benefits Act 1992(**15**), 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, or
- (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.”.

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

—(3) In section 167ZT (power to apply Part 12ZB) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**16**), 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, or
- (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.”.

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

In section 11(4)(c) of the Children (Scotland) Act 1995(**17**) (cases in which court orders may not be made) after “section 54” insert “or 54A”.

Children (Northern Ireland) Order 1995

In Article 8(4)(g) of the Children (Northern Ireland) Order 1995(**18**) (interpretation) after “section 54” insert “or “54A”.

(15) 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); S.I. 2014/2886 has been made under subsection (2) of section 171ZT. Section 171ZK was inserted by section 2 of the Employment Act 2002 (c. 22) and amended by section 122(5) of the Children and Families Act 2014.

(16) 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).

(17) 1995 c. 36; section 11(4) has been 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).

(18) S.I. 1995/755 (N.I. 2); article 8(4)(g) has been substituted by paragraph 73 of Schedule 6 to the Human Fertilisation and Embryology Act 2008 (c. 22).

Employment Rights Act 1996

—(4) The Employment Rights Act 1996(19) is amended as follows.

Section 57ZE (right to time off to accompany to ante-natal appointment)(20) is amended as follows.

Omit the “or” before subsection (7)(e).

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.”.

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(5),
- (c) the expected child is being carried by the pregnant woman as a result of such procedure as is described in section 54A(1)(a),
- (d) the requirement in section 54A(1)(b) is satisfied by reference to the person,
- (d) the person would satisfy subsection (2) of that section (subject to subsections (3) and (4) of that section) if he or she made an application under that section at the time that he or she seeks to exercise the right under this article, and
- (e) the person would satisfy subsection (2) of section 54A (subject to subsection (3) and (4) of that section.”.

Section 57ZG (right to time off to accompany to ante-natal appointment: agency workers)(21) is amended as follows.

Omit the “or” before subsection (7)(e).

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.”.

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(5),
- (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,
- (d) the person would satisfy subsection (2) of that section (subject to subsections (3) and (4) of that section) if he or she made an application under that section at the time that he or she seeks to exercise the right under this section, and

(19) 1996 c. 18. Section 11(4)(c) has been amended by paragraph 52(2) of Schedule 6 to the Human Fertilisation and Embryology Act 2008 (c. 22).

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

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

- (e) the person expects that he or she will satisfy the conditions in section 54A(2) (subject to subsections (3) and (4)), (6), (7) and (10) as regards the intended application.”.

In section 75A (ordinary adoption leave)(**22**) for subsection (8) substitute—

“(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, or
- (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.”.

In section 75B (additional adoption leave)(**23**) 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, or
- (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.”.

In section 75D(1A)(a) (supplemental)(**24**) after “order” insert “under section 54 or 54A of the Human Fertilisation and Embryology Act 2008”.

Family Law Act 1996

In section 63(2)(h) of the Family Law Act 1996 (interpretation)(**25**) for “section 54” substitute “sections 54 and 54A”.

Employment Rights (Northern Ireland) Order 1996

—(5) The Employment Rights (Northern Ireland) Order 1996(**26**) is amended as follows.

Article 85ZE (right to time off to accompany to ante-natal appointment)(**27**) is amended as follows.

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

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.”.

(22) 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); section 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.

(23) 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.

(24) 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).

(25) 1996 c. 27. Section 63 has been amended by paragraphs 85 and 88 of Schedule 3 to the Adoption and Children Act 2002 (c. 38); paragraphs 41(1), (2) and (3) of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c. 28); Part 1 of Schedule 9 to the Civil Partnership Act 2004 (c. 33); paragraphs 3(1) and (2) of Schedule 2 to the Forced Marriage (Civil Protection) Act 2007 (c. 20); paragraph 37 of Schedule 6 to the Human Fertilisation and Embryology Act 2008 (c. 22); paragraphs 129 and 138 of Schedule 11 to the Crime and Courts Act 2013 (c. 22); section 18(2)(b) of the Children and Families Act 2014 (c. 6); paragraph 17 of Schedule 4 to the Serious Crime Act 2015 (c. 9).

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

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

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 (5) 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,
- (d) the person would satisfy subsection (2) of section 54A (subject to subsections (3) and (4) of that section) if he or she made an application under that section at the time that he or she seeks to exercise the right under this article, and
- (e) the person expects that he or she will satisfy the conditions in subsections (2) (subject to subsections (3) and (4)), (6), (7) and (10) of that section as regards the intended application.”.

Article 85ZG (right to time off to accompany to ante-natal appointment: agency workers)(**28**) is amended as follows.

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

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.”.

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 (5) 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,
- (d) the person would satisfy subsection (2) of section 54A (subject to subsections (3) and (4) of that section) if he or she made an application under that section at the time that he or she seeks to exercise the right under this article, and
- (e) the person expects that he or she will satisfy the conditions in subsections (2) (subject to subsections (3) and (4)), (6), (7) and (10) of that section as regards the intended application.”.

For Article 107AC (ordinary adoption leave: power to apply to other cases)(**29**) 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, or

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

(**29**) Article 107AC was inserted by section 10(2) of the Work and Families Act (Northern Ireland) 2015 (c. 1).

- (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.”.

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(30) 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, or
- (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.”.

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

In Article 2(3)(f) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (interpretation)(31) for “section 54” substitute “sections 54 and 54A”.

Legal Aid, Sentencing and Punishment of Offenders Act 2012

In paragraph 12(9) of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (services which are civil legal services)(32), 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

Amendment of the High Court (Distribution of Business) Order 1991

1.—(1) The High Court (Distribution of Business) Order 1991(33) is amended as follows.

In article 2 (assignment of High Court business to the Family Division), in paragraph (a)(iv), after “section 54” insert “or section 54A”.

Amendment of the Social Fund Maternity and Funeral Expenses (General) Regulations 2005

—(2) The Social Fund Maternity and Funeral Expenses (General) Regulations 2005(34) are amended as follows.

(30) Article 107A has been 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).

(31) 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 but none are relevant for the purposes of this Order.

(32) 2012 c. 10; there are amendments to paragraph 12 of Schedule 1 but none are relevant for the purposes of this Order.

(33) S.I. 1991/1210; article 2 has been amended by paragraph 1(2) of Schedule 11 to the Constitutional Reform Act 2005 (c. 4) and S.I. 2010/986.

(34) S.I. 2005/3061; amended by S.I. 2010/2760; there are other amendments to these Regulations which are not relevant.

In regulation 3(1) (“interpretation”), in the definition of “parental order”, after “section 54” insert “or section 54A”.

Amendment of the Family Proceedings Fees Order 2008

—(3) The Family Proceedings Fees Order 2008⁽³⁵⁾ is amended as follows.

In entry 1.8 in the table in Schedule 1 (fees to be taken), after “section 54” insert “or section 54A”.

Amendment of the Family Procedure Rules 2010

—(4) The Family Procedure Rules 2010⁽³⁶⁾ are amended as follows.

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”.

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

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

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 section subsection (1) of that section.”.

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 sections 54(1) to (8) of that Act;
- (ii) section 54A(1) of the 2008 Act, the matters set out in sections 54A(1) to (8) of that Act;”.

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

Amendment of the Family Court (Composition and Distribution of Business) Rules 2014

—(5) The Family Court (Composition and Distribution of Business) Rules 2014⁽³⁷⁾ are amended as follows.

In Schedule 1 (allocation)—

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

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

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) The Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA, 12ZB and 12ZC to Parental Order Cases) Regulations 2014⁽³⁸⁾ are amended as follows.

In regulation 2 (interpretation)—

for the definition of “intended parent” substitute—

⁽³⁵⁾ S.I. 2008/1054.

⁽³⁶⁾ 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.

⁽³⁷⁾ S.I. 2014/840.

⁽³⁸⁾ S.I. 2014/2866.

““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
 - (i) 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 order under that section on that application in respect of the child;”;

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

omit the definition of “parental order parent”;

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.”.

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

In regulation 4 for “parental order parents” substitute “section 54 parental order parents and section 54A parental order parents”.

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

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

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

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”;

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,””;

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

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 an order under that section on that application in respect of the child.”.

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

—(7) The Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations 2014⁽³⁹⁾ are amended as follows.

In regulation 2 (interpretation)—

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 order under that section on that application 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

omit the definition of “parental order parent”.

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.”.

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

in paragraph (a)(ii)—

in the appropriate place, insert—

⁽³⁹⁾ 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 an order under that section on that application in respect of the child;”;

in the definition of “Parent A”, for “the intended parent or parental order parent” substitute “the section 54 parental order parent”;

omit the definition of “parental order parent”; and

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;”;

in paragraph (b), in the substituted paragraph (2) of the Pay Regulations for—

“An intended parent or parental order parent” substitute “A section 54 parental order parent”; and

“the other intended parent or parental order parent” substitute “the other section 54 parental order parent”.

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”.

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.””.

In regulation 9 (application of regulation 11 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”; and

in paragraph (a), in the inserted sub-paragraph (a), for “an intended parent or” substitute “a section 54”.

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”.

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”.

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”.

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”.

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”.

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”.

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”.

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”.

In regulation 18 (application of regulation 22 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”;

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;”;

in paragraph (a), in paragraph (c) of the substituted paragraph (1), for “a parental order” substitute “an order under that section”;

in paragraph (b)(ii), in the substituted sub-paragraph (b), for “a parental order” substitute “an order under that section”; and

in paragraph (b)(iii), in the substituted sub-paragraph (c), for “a parental order” substitute “an order under that section”.

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 (5) 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.”;
- (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(5) of the Human Fertilisation and Embryology Act 2008 for an application for an order under that section for the child expires;”
 - ;
 - (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 a parental order under that section is refused, withdrawn or otherwise terminated without the order being granted.””.

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”.

In regulation 20 (application of regulation 24 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”; and

in paragraph (b)—

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

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

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)(a) 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;
- (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.””.

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”.

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”.

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”.

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”.

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”.

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

—(8) The Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations⁽⁴⁰⁾ are amended as follows.

In regulation 1(2)—

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 an order under that section on that application in respect of the child;”;

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

omit the definition of “parental order parent”;

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.”.

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

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

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

(40) S.I. 2014/3095.

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

—(9) The Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014⁽⁴¹⁾ are amended as follows.

In regulation 2 (interpretation)—

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 an order under that section on that application in respect of the child;”;

omit the definition of “parental order”;

omit the definition of “parental order parent”;

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 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;

“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.”.

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.”.

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

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

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

for the definition of “intended parent”, substitute—

⁽⁴¹⁾ S.I. 2014/3096.

““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 order under that section on that application in respect of the child;”;

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

omit the definition of “parental order parent”;

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 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;

“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

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;”.

In paragraph (c) of regulation 6, before the words “parental order parent” on each occasion they appear, insert “section 54”.

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

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.”;

- (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”.

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

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

after “apply to” insert “section 54”; and

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

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

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

after “apply to” insert “section 54”; and

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

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

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

after “apply to” insert “section 54”; and

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

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.”

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”.

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”.

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

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.””.

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

after “apply to” insert “section 54”;

for paragraph (1) inserted by the modification in paragraph (a) 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 in subsection (3) of that section, or
- (b) the employee’s application for an order under section 54 of that Act 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”;

in paragraph (b)(i) after “parental order” insert “under section 54”;

in paragraph (b)(ii) after “parental order” insert “under section 54”.

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 (5) of that section, or
- (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(5) of the Human Fertilisation and Embryology Act 2008 for an application for a parental 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 a parental 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”;

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

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

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

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

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

after “apply to” insert “section 54”;

in paragraph (c)—

for the definition of “parental order parent” substitute—

““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.”;

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 an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child;
- (b) expects the court to make an order under that section 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.”.

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

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

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

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

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

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”.

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

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

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

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

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

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

Amendment of 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

—(10) 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(42) are amended as follows.

In regulation 2 (interpretation)—

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—

(42) S.R.N.I. 2015/90.

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

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

omit the definition of “parental order parent”;

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.”.

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

In regulation 4 for “parental order parents” substitute “section 54 parental order parents and section 54A parental order parents”.

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

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

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

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”;

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;””;

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

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 an order under that section on that application in respect of the child.”.

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

—(11) The Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations (Northern Ireland) 2015(43) are amended as follows.

In regulation 2 (interpretation)—

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 order under that section on that application 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

omit the definition of “parental order parent”.

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.”.

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

in paragraph (a)(ii)—

in the appropriate place, insert—

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

(43) S.R. 2015/92.

- (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 order under that section on that application in respect of the child;”;

in the definition of “Parent A”, for “the intended parent or parental order parent” substitute “the section 54 parental order parent”;

omit the definition of “parental order parent”; and

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;”;

in paragraph (b), in the substituted paragraph (2) of the Pay Regulations for—

“An intended parent or parental order parent” substitute “A section 54 parental order parent”; and

“the other intended parent or parental order parent” substitute “the other section 54 parental order parent”.

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”.

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.””.

In regulation 9 (application of regulation 11 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”; and

in paragraph (a), in the inserted sub-paragraph (a), for “an intended parent or” substitute “a section 54”.

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”.

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”.

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”.

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”.

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”.

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”.

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”.

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”.

In regulation 18 (application of regulation 22 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”;

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;”;

in paragraph (a), in paragraph (c) of the substituted paragraph (1), for “a parental order” substitute “an order under that section”;

in paragraph (b)(ii), in the substituted sub-paragraph (b), for “a parental order” substitute “an order under that section”; and

in paragraph (b)(iii), in the substituted sub-paragraph (c), for “a parental order” substitute “an order under that section”.

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 (5) 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.”;

(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(5) of the Human Fertilisation and Embryology Act 2008 for an application for an order under that section for the child expires;”
;
- (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 a parental order under that section is refused, withdrawn or otherwise terminated without the order being granted.”.

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”.

In regulation 20 (application of regulation 24 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”; and

in paragraph (b)—

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

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

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)(a) 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.”

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”.

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”.

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”.

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”.

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”.

Amendment of 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

—(12) 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⁽⁴⁴⁾ are amended as follows.

In regulation 1(2)—

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 an order under that section on that application in respect of the child;”;

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

omit the definition of “parental order parent”;

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.”.

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

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

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

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

—(13) The Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations (Northern Ireland) 2015⁽⁴⁵⁾ are amended as follows.

⁽⁴⁴⁾ S.R. 2015 No. 100.

In regulation 2 (interpretation)—

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 an order under that section on that application in respect of the child;”;

omit the definition of “parental order”;

omit the definition of “parental order parent”;

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 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;

“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.”.

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.”.

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

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

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

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 an order under that section on that application in respect of the child;”;

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

omit the definition of “parental order parent”;

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 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;

“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.”;

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;”.

In paragraph (c) of regulation 6, before the words “parental order parent” on each occasion they appear, insert “section 54”.

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

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.”;

(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.”.

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

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

after “apply to” insert “section 54”; and

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

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

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

after “apply to” insert “section 54”; and

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

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

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

after “apply to” insert “section 54”; and

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

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.”

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”.

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”.

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

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.””.

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

after “apply to” insert “section 54”;

for paragraph (1) inserted by the modification in paragraph (a) 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 in subsection (3) of that section, or

(b) the employee’s application for an order under section 54 of that Act 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”;

in paragraph (b)(i) after “parental order” insert “under section 54”;

in paragraph (b)(ii) after “parental order” insert “under section 54”.

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 (5) of that section, or
- (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(5) of the Human Fertilisation and Embryology Act 2008 for an application for a parental 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 a parental 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”;

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

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

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

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

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

after “apply to” insert “section 54”;

in paragraph (c)—

for the definition of “parental order parent” substitute—

““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;”;

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 an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child;
- (b) expects the court to make an order under that section 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.”.

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

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

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

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

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

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”.

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

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

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

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

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

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

Amendment of the Human Fertilisation and Embryology (Mitochondrial Donation) Regulations 2015

—(14) The Human Fertilisation and Embryology (Mitochondrial Donation) Regulations 2015(46) are amended as follows.

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

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.””.

(46) S.I. 2015/572.

Amendment of the Judicial Pensions (Fee-paid Judges) Regulations 2017

—(15) The Judicial Pensions (Fee-paid Judges) Regulations 2017⁽⁴⁷⁾ are amended as follows.

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

“(9) In this regulation, “parental order” means—

- (a) an order under section 54(1) of the Human Fertilisation and Embryology Act 2008 when applied for by two persons; or
- (b) an order under section 54A(1) of that Act when applied for by one person alone.”.

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 a single person may apply for a parental order and makes provision consequential on that change.

⁽⁴⁷⁾ S.I. 2017/522.

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