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Human Fertilisation and Embryology Bill [HL]

[HL Bill 6, 2007–08]

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Contents

1. Introduction

The Human Fertilisation and Embryology Bill [HL] was introduced in the House of Lords on 8th November 2007 and is due to have its second reading on 19th November.

The Department of Health press release announcing its publication outlined that the Bill would reform the regulation of human embryology whilst retaining the current model of regulation and the basic foundations of the existing law contained in the Human Fertilisation and Embryology Act 1990. It stated that:

> The Bill updates current regulation of assisted reproduction and embryo research in the light of developments in technology and society's attitudes. It will ensure regulation is fit for purpose, and help maintain the UK's position as a world leader in reproductive technologies and research.
>
> The main elements of the Bill are:
>
> - ensuring that the creation and use of all human embryos outside the body – whatever the process used in their creation – are subject to regulation;
> - a ban on selecting the sex of offspring for non-medical reasons;
> - retention of a duty to take account of "the welfare of the child" when providing fertility treatment, but removal of the reference to "the need for a father";
> - provisions to recognise same-sex couples as legal parents of children conceived through the use of donated sperm, eggs or embryos;
> - altering restrictions on the use of HFEA-collected data to make it easier to do follow-up research;
> - provisions increasing the scope of legitimate embryo research activities, including regulation of "inter-species embryos" (embryos combining human and animal genetic material).
>
> Dawn Primarolo said:
>
> "The UK is a world leader and a good place to do research. This Bill will allow legitimate medical and scientific use of human reproductive technologies for research to flourish in this country, while giving the public confidence that they are being used and developed sensibly with appropriate controls in place."
>
> "I believe this Bill will provide clarity and assurance to patients, researchers, the medical profession, and the public for years to come."
>
> (Department of Health Press Release 'Human Fertilisation and Embryology Bill published', 9th November 2007)

The Bill's *Explanatory Notes*, published alongside the Bill (HL Bill 6-EN), provide the following summary of the different parts of the Bill:

> ***Part 1***
>
> 11. Part 1 (including Schedules 1 to 5) makes a range of amendments to the 1990 Act to take account of scientific developments, to reflect changes in societal attitudes and to update the HFEA's ability to regulate according to principles of better regulation…
>
> ***Part 2***
>
> 14. Part 2 replaces existing provision under the 1990 Act to determine legal parenthood for future cases involving assisted reproduction. The Bill introduces a new concept of parenthood for a mother's female partner in certain circumstances, making equivalent provision to that for opposite sex couples.
>
> 15. The 1990 Act currently provides that where an unmarried couple are "treated together" in a licensed clinic using donated sperm, the male partner will be regarded as the father of any child born as a result. "Treated together" in this context is a somewhat loose concept. Part 2 makes provision that both the prospective mother and the man (or in the case of person in a same-sex relationship, the woman) who is intended to be the second parent of the child must consent to such in writing.
>
> 16. Part 2 also makes provision in relation to parenthood in respect of children born after a surrogacy arrangement, which is intended to put same sex couples and unmarried opposite sex couples in the same position as married couples.
>
> ***Part 3***
>
> 17. Part 3 of the Bill contains amendments to the Surrogacy Arrangements Act 1985, miscellaneous provisions and general provisions about order and regulation-making powers, powers to make consequential and transitional provisions, and commencement.
>
> (*Explanatory Notes*, paragraphs 11–17)

Subject to certain provisions, set out in clause 67, the Bill extends to England and Wales, Scotland and Northern Ireland. The financial effects of the Bill are summarised in paragraph 249 of the *Explanatory Notes*. A final regulatory impact assessment and an illustrative consolidated text of the 1990 Act, as amended, have been published on the Department of Health web site (http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Actsandbills/DH_080211). The latter demonstrates the effect of the amendments made by the Bill on the 1990 Act.

The purpose of this Library Note is to provide some background to the development of the Bill and to summarise the effect of, and debate surrounding, some of the more contentious provisions. A detailed assessment of all provisions in the Bill is beyond the scope of this paper. The issue of abortion has also been discussed as amendments altering the law on abortion may be tabled during the passage of the Bill.

I would like to thank Dr Helen Morant, from the House of Commons Library, for her advice and assistance in the preparation of this Library Note.

2. Background

The Human Fertilisation and Embryology Act 1990 implemented many of the recommendations of the Committee of Inquiry, chaired by Dame (now Baroness) Warnock. The Committee had been established to consider the ethical, legal and social implications of developments in the field of assisted human reproduction most notably in response to the birth of the first child conceived through *in vitro* fertilisation (IVF) in 1978. The 1990 Act provides a legislative framework for the creation of human embryos for use in fertility treatment, the use of human embryos in research, and the use of donated gametes and embryos. It also established the Human Fertilisation and Embryology Authority (HFEA), an independent regulator overseeing practice in these areas. Subsequent to the 1990 Act there have been several important legislative changes, the most significant of which are the 2001 regulations extending the list of purposes for which embryo research can be undertaken, the Human Reproductive Cloning Act 2001 which outlawed cloning of a human being for reproductive purposes, and the 2004 regulations which removed donor anonymity and allowed donor-conceived children to access the identity of donors involved in their conception.

On 21st January 2004 the Department of Health announced a review of the 1990 Act. On 24th March 2005 the House of Commons Science and Technology Committee published a report on *Human Reproductive Technologies and the Law* (HC 7, 24th March 2005) following an in-depth year long inquiry. The conclusions and recommendations of the report set out the ethical stance and overall approach to human reproductive technologies and research using human embryos as follows:

> We accept that [in] a society that is both multi-faith and largely secular, there is never going to be consensus on the level of protection accorded to the embryo or the role of the state in reproductive decision-making. There are no demonstrably "right" answers to the complex ethical, moral and political equations involved. We respect the views of all sides on these issues. We recognise the difficulty of achieving consensus between protagonists in opposing camps in this debate, for example the pro-life groups and those advocating an entirely libertarian approach to either assisted reproduction or research use of the embryo. We believe, however, that to be effective this Committee's conclusions should seek consensus, as far as it is possible to achieve. Given the rate of scientific change and the ethical dilemmas involved, we conclude, therefore, that we should adopt an approach consistent with the gradualist approach, of which the Warnock Committee is one important example. This does not mean that we will shy from criticism of regulation to date, where we believe it warranted. But it does mean that we accept that assisted reproduction and research involving the embryo of the human species both remain legitimate interests of the state. Reproductive and research freedoms must be balanced against the interests of society but alleged harms to society, too, should be based on evidence.
>
> We do not see why the area human reproductive technologies should do anything other than proceed under a precautionary principle currently prevalent in scientific, research and clinical practise. This means…alleged harms to society or to patients need to be demonstrated before forward progress is unduly impeded.
>
> We believe that the research on human embryos can be undertaken without compromising their special status but that this research should have proper ethical

> oversight...We further conclude that, where necessary, embryos can be created specifically for research purposes.
>
> (HC 7, page 175)

A minority report was issued due to concerns raised by some members of the Committee in relation to the adoption of what was seen as an "extreme libertarian approach" in the drafting of the report (HC 491, 29th March 2005).

The Science and Technology Committee Report informed the Government public consultation exercise in 2005 (*Review of the Human Fertilisation and Embryology Act*). The consultation posed a wide range of questions about how the law might be updated. An independent summary of the arguments raised during the consultation were published on 29th March 2006 (*Report on the Consultation on the review of the Human Fertilisation and Embryology Act 1990*).

In December 2006 the Government presented its proposals for revised legislation in a White Paper (*Review of Human Fertilisation and Embryology Act*, Cm 6989). The Government had undertaken the review to ensure that "the law and regulation remained effective and fit for purpose given the pace of scientific developments and public attitudes associated with them" and more specifically in response to:

- the development of new procedures and technologies in assisted reproduction
- international developments in the standards that clinics have to meet
- possible changes in public perceptions and attitudes on complex ethical issues
- the need to ensure the continued effectiveness of regulation, to reduce uncertainty and the scope for legal challenges.

> (Cm 6989, paragraphs 1.2 and 1.3)

The Government concluded that "the foundations of the current law remains sound, and provide an effective and appropriate model of regulation for the development and use of human reproductive technologies" (*ibid*, paragraph 1.8). The Government stated that "it did not intend to reopen debate on those fundamental aspects of the law that are widely accepted in our society or which have been recently debated and conclusively resolved in Parliament" including "the creation and use of embryos for research, the prohibition of human reproductive cloning, and the removal of donor anonymity" (*ibid*, paragraphs 1.9).

Caroline Flint, the Public Health Minister, outlined the proposals in the White Paper:

> They include a statutory ban on sex selection for non-medical reasons, explicit rules for embryo screening, and more scope for embryo research. It also contains further details of the proposed new Regulatory Authority for Tissue and Embryos (RATE), which will replace the existing regulators the Human Fertilisation and Embryology Authority (HFEA) and the Human Tissue Authority (HTA).
>
> Launching the White Paper, Caroline Flint said:

"The UK is a world leader in reproductive technology and a pioneer in the way it is regulated. But the current law, which has served us well, is in need of revision. Technology has changed and so have attitudes. There are new ways of creating embryos not envisaged when the current Act was drawn up; while new techniques to select the sex of a child and ever-increasing possibilities to screen embryos for diseases are presenting new challenges and dilemmas.

"Many of these issues have profound ethical, legal and social implications, which is why it has been important to seek a wide range of views on all of the proposals. I believe that the proposed changes we are publishing today will ensure that legitimate medical and scientific uses of human reproductive technologies continue to flourish, while giving the public confidence in how they are being used and developed.

"These proposals will form a draft Bill, which will be presented to Parliament next year for pre-legislative scrutiny."

Key proposals in the White Paper include:

- further details on how the new regulator RATE will work
- ensuring that all human embryos outside the body - whatever the process used in their creation - are subject to regulation
- a ban on sex selection for non-medical reasons
- explicit criteria in the law for the screening of embryos for diseases
- increasing the scope of legitimate embryo research activities, subject to strict controls
- retention of the duty to take account of the welfare of the child in providing fertility treatment, but removal of the reference to "the need for a father"

(Department of Health Press Release, 'Minister publishes proposals for revised law on assisted reproduction', 14th December 2006)

The White Paper proposed that the creation of human-animal chimera or hybrid embryos (inter-species embryos) *in vitro* for research should be prohibited with the provision of powers to regulate at a future date for circumstances in which they would be allowed under licence (Cm 6989, paragraph 2.85). This was interpreted as an overly prohibitive approach by the majority of the scientific community and the HFEA and resulted in significant opposition. In November 2006 the HFEA had received two applications from research teams for licences to create a type of hybrid embryo. As a result of these developments, the House of Commons Science and Technology Committee established an inquiry into the Government proposals and their impact upon stem cell research in the UK. The committee reported in April 2007 (*Government proposals for the regulation of hybrid and chimera embryos*, HC 272) and concluded that the creation of such embryos should be allowed for research purposes. The Government accepted this principle subject to the usual requirements for embryo research but excluded 'true hybrids' (*Human Tissue and Embryos (Draft) Bill*, Cm 7087, paragraphs 1.10–1.14). This issue is discussed in more detail in the section on inter-species embryos below.

The *Human Tissue and Embryos (Draft) Bill* (Cm 7087), published on 17th May 2007, was subject to pre-legislative scrutiny by a Joint Committee which reported in August 2007 (HL 169/HC 630, 1st August 2007) with the *Government Response* being published in October 2007 (Cm 7209). The Joint Committee's main recommendations related to three areas "the regulatory regime proposed by the Government, issues around the approval of inter-species embryo research and ethical issues surrounding fertility" (Joint Committee Press Release, 'Joint Committee on Draft Human Tissue and Embryology Bill set out concerns', 1st August 2007).

It is beyond the scope of this paper to cover all of the issues raised by the Bill, however, the following sections look at those issues which have appeared to be most contentious during pre-legislative scrutiny, concentrating on the debates highlighted by the Joint Committee and their conclusions and the Government's response. It also reports on the most recent comment from stakeholders, where available, subsequent to the publication of the Bill.

3. Regulatory Authority for Tissue and Embryology (RATE)

The Draft Bill had proposed merging the HFEA and the Human Tissues Authority (HTA) into a new regulatory body, the Regulatory Authority for Fertility and Tissue (this was subsequently renamed the Regulatory Authority for Tissue and Embryology). The policy was developed as a result of the Department of Health's review *Reconfiguring the Department of Health's Arms Length Bodies* (July 2004). This proposal was "part of the wider Government aim of minimising and modernising the bureaucracy that goes with the provision of public services" and would "provide for one competent authority to be responsible for the regulation and inspection of all functions relating to the whole range of human tissue. RATE would ensure that in these closely linked areas, common principles and standards would be applied. Having one authority would also minimise the risk of overlapping regulation, as well as continuity at the interface between related areas, for example embryo research and cell therapies. RATE would also achieve savings through increased efficiency and effectiveness" (Cm 7209, paragraphs 14–15).

The Joint Committee concluded that the two regulators should remain as separate entities and that RATE should not be established. The Government accepted the recommendation and agreed to drop the proposal whilst bringing in certain provisions for the HFEA that would have been applied to RATE, including provisions to allow HFEA members to delegate functions to HFEA staff and, with the necessary safeguards, for powers to delegate or contract out functions outside the authority. They indicated that scope for the two authorities to streamline regulation, for instance through sharing support functions would still be considered (Cm 7209, paragraphs 16–17). A detailed description of the development of these proposals can be found in House of Commons Library Standard Note SN/SC/4415 *Proposals for the establishment of a new Regulatory Authority for Tissues and Embryos (RATE)* (12th October 2007). Following the recent publication of the Bill, the British Medical Association (BMA) and the Academy of Medical Sciences have welcomed the Government's confirmation that the proposals for RATE have been dropped:

> The BMA is delighted that the HFE Bill reconfirms the government's decision not to merge the HFEA and the HTA to form a single body, RATE. We can now look forward to working with the government to see how improvements can be made to the existing regulatory structure.
>
> (BMA Press Release, 'BMA response to the Human Fertilisation and Embryology Bill', 9th November 2007)
>
> We had strongly objected to the proposed merger… We are delighted to see that this proposal has been dropped. The creation of such a large and unwieldy regulator would have reduced effectiveness and coherence, creating unnecessary bureaucracy that would have hindered research.
>
> (Academy of Medical Sciences: Personal communication, 9th November 2007)

4. Inter-species Embryos

Clause 4 of the Bill inserts a new section 4A into the 1990 Act defining, and laying out prohibitions in relation to certain types of embryos ("inter-species embryos"). Further provisions about the licencing of activities involving these embryos are made in clauses 11, 12, 13, 15 and paragraphs 5 and 6 of Schedule 2 to the Bill (*Explanatory Notes*, paragraphs 33 and 37).

The 1990 Act does not explicitly address the creation of inter-species embryos other than prohibiting the mixing of human and animal gametes (sperm or eggs) which could result in the creation of 'true' hybrid embryos (with the exception of a specific 'hamster test' used to assess the fertility of human sperm). The aim of the Bill's provisions is to provide clarification on the use of techniques to create embryos for research purposes combining human and animal material. The main driver behind these developments is the need for a greater supply of embryonic stem cells for research. These are currently primarily derived from the limited number of donated human embryos or eggs, usually left over from IVF treatment, under licence from the HFEA. A useful summary of the basic scientific concepts concerning stem cells and inter-species embryos can be found in HFEA *Hybrids and Chimeras*: *A consultation on the ethical and social implications of creating human/animal embryos in research* (April 2007).

The White Paper had outlined the Government's intention to prohibit the creation of such embryos but to have a regulation making power for exceptions to the general prohibition. The Science and Technology Committee in its report on *Human Reproductive Technologies and the Law*, found that the Government's approach was overly restrictive and recommended that the creation of inter-species embryos should be allowed under licence by the regulator (HFEA), subject to the normal controls (HC 7, paragraph 66). This view was largely accepted by the Government, however, hybrid embryos were to be excluded from the list of permitted inter-species embryos. Concerning the exclusion of hybrid embryos, the Joint Committee concluded that:

> …the Government's approach on this issue is misguided and rests on no sound point of principle. We can see no clear reason why certain categories of inter-species embryo should be permitted under licence and 'true' hybrids proscribed. We recommend that the HFEA should be left to judge which entities may be created, kept and used for research purposes under licence.
>
> (HL 169/HC 630, paragraph 304)

The Government accepted this recommendation (Cm 7029, paragraph 31) and the Bill has duly been amended to include human-animal hybrid embryos.

The overall conclusions of the Joint Committee on the use of inter-species embryos *per se* recognised the sensitivity of the subject and the strong views held on either side of the debate. Those opposed to the research outlined concerns about the moral status of the embryo, crossing the species barrier and a perceived lack of scientific merit of the research. Those in favour argued that their creation and use was essential in order to compensate for the shortage of human eggs and to avoid harm to women who donate them as well as being likely to result in genuinely useful scientific developments (HL 169/HC 630, paragraphs 145–151). The Committee stated that they had been unable to reach a consensus on the matter and recommended that the issue is put to a free vote in both Houses (*ibid*, paragraph 177).

In response to the two research applications received by the HFEA in November 2006, the HFEA carried out a full public consultation on the ethical and social implications of creating inter-species embryos as well as conducting a scientific consultation and literature review (the research applications involve the creation of cytoplasmic hybrid embryos which are a type of inter-species embryo containing more than 99% human genetic material). The HFEA published the results of the consultation (*Hybrids and Chimeras*) in October 2007 and concluded that "there is no fundamental reason to prevent cytoplasmic hybrid research. However, public opinion is very finely divided with people generally opposed to this research unless it is tightly regulated and it is likely to lead to scientific or medical advancements...in general, people who do not fundamentally oppose embryo research are prepared to accept that human animal research may have some value" (HFEA Press Release, 'HFEA statement on its decision regarding hybrid embryos', 5th September 2007).

In response to the publication of the Bill, groups representing the medical establishment and medical research charities were supportive of the Government:

> We are…very pleased that, unlike in the draft bill, the government is now proposing that the creation of human/animal embryos can go ahead for research purposes, with strict controls. This research is essential to the investigation of many serious and debilitating diseases, including Parkinson's and Alzheimer's.
>
> (BMA Press Release, 'BMA response to the Human Fertilisation and Embryology Bill', 9th November 2007)
>
> We welcome the pledge that provisions in the forthcoming legislation will explicitly permit research into all types of inter-species embryo, including cytoplasmic hybrid and true hybrid embryos, which could lead to new tools for understanding human embryonic stem cells and ultimately generate better treatments for disease.
>
> We have always maintained that there are no substantive ethical or moral reasons not to proceed with research on human embryos containing animal material under the current framework of regulatory control. We are please to see that the Government has accepted this position.
>
> (Academy of Medical Sciences: Personal communication, 9th November 2007)
>
> The Bill will ensure regulation is fit for purpose, help maintain the UK's position as a world leader in research and updates current regulation in light of developments in technology and society's attitudes.
>
> (Association of Medical Research Charities, 'AMRC Comment on Publication of Human Fertilisation and Embryology Bill', 12th November 2007).

However, groups concerned with ethical and religious aspects of this issue were highly critical.

The Christian Medical Fellowship (CMF), a group representing Christian doctors, stated that whilst fully supportive of science it must operate within ethical boundaries and that "creating animal-human hybrid embryos for research is unnecessary and unethical. It would blur the boundaries between humans and animals and undermine our human dignity. It would offend the 'image of God', transgress the biblical prohibition of mixing 'kinds', damage concepts of

historicity and lineage, and fundamentally alter the nature of humanity" (CMF Statement: Personal communication, 12th November 2007). The Lawyers' Christian Fellowship (LCF) commented that "the Bill will redefine what is meant by 'human', and the rights and dignities accorded to human life, by legalising the creation of embryos by fertilising a human egg with animal sperm, or fertilising an animal egg with human sperm. This is the most disturbing of a raft of provisions which will further downgrade the dignity of the embryo (something which the 1990 Act stipulated should be protected)" (LCF, 'Deconstruction of a civilised society – ramifications of the Human Fertilisation and Embryology Act, 12th November 2007).

The pressure group Comment on Reproductive Ethics (CORE) which focuses on ethical dilemmas surrounding human reproduction, criticised a number of provisions in the Bill but in relation to inter-species embryos stated that "in ethical terms this is possibly the most groundbreaking aspect of the Bill…that a civilised society could even consider it appropriate to create animal-human hybrids itself surprises most of the rest of the world, not least our European neighbours; that it should be considered of such minor importance as not to merit a free vote in Parliament is scandalous" (CORE Press Release, 'New human fertilisation and embryology bill – dark days ahead for democracy and the ordre public', 10th November, 2007)

5. Welfare of the child and need for a father

Taking account of the welfare of the child is an explicit requirement set out in the 1990 Act as a condition of all licences to provide assisted conception treatment. Section 13(5) of the Act states that:

> a woman shall not be provided with treatment services unless account has been taken of the welfare of the child who may be born as a result of the treatment (including the need of that child for a father), and of any other child who may be affected by the birth.

The HFEA is required to give guidance on this requirement in its *Code of Practice*, compliance with which can impact on licence decisions. Following a consultation in 2005 the HFEA revised its guidance to "focus on the likelihood of serious harm, with a general presumption in favour of providing treatments for patients who seek it" (Cm 6989, paragraph 2.21).

Clause 14(2(b)) of the Bill removes the reference to a child's need for a father from the licence conditions imposed under section 13(5) of the 1990 Act (*Explanatory Notes*, paragraph 112) but retains the requirement to take account of the welfare of the child.

Welfare of the Child

There has been some debate over whether the welfare of the child requirement is fit for purpose. The Science and Technology Committee in its report on *Human Reproductive Technologies and the* Law, recommended that section 13(5) should be abolished in its current form, on the basis that it "discriminates against people with fertility problems, is impossible to implement, and is of questionable practical value" (HC 7, paragraph 107). However, a number of witnesses giving evidence to the Joint Committee considering the Draft Bill, argued that this provision should be strengthened to make the child's welfare the 'paramount' consideration in law, more akin to that for adoption (HL 169/HC 630, paragraphs 221–223).

On the debate surrounding the welfare of the child provision, the Joint Committee stated that "the welfare of a child is a key area where consistent, understandable and enforceable legislation is needed. We support the approach taken in the 1990 Act towards the welfare of the child and the positive shift in HFEA guidance towards a risk-based approach with the presumption of treatment unless information suggests serious harm will be caused" (HL 169/HC 630, paragraph 241).

Need for a father

The Science and Technology Committee considered that given a general duty to take account of the welfare of the child "the requirement to consider whether a child born as a result of assisted reproduction needs a father is too open to interpretation and unjustifiably offensive to many. It is wrong for legislation to imply that unjustified discrimination against "unconventional families" is acceptable" (HC 7, paragraph 101).

In the White Paper, the Government outlined why they proposed to remove the need for a father from the legislation:

> Responses to the Government's consultation from individual members of the public generally favoured retention of a reference to the child's need for a father, as part of the consideration of the welfare of the child. Many thought that the legislation should be revised to refer to a need for both a mother and a father. The Government has carefully considered this matter, and in particular has taken into account considerations of the proper role of the State, and of clinicians, in seeking to determine family forms via controls on access to medically-assisted conception, particularly in the light of more recent enactments such as the law relating to civil partnerships.
>
> On balance, the Government has decided to propose that the reference to the need for a father (in consideration of the welfare of the child) should be removed from the Act. The Government is not convinced that the retention of this provision could be justified in terms of evidence of harm, particularly when weighed against the potential harms arising from the consequences of encouraging some women who wish to conceive to make private arrangements for insemination rather than use licensed treatment services.
>
> (Cm 6989, paragraphs 2.25–2.26)

The Joint Committee found that views on the need for a father provision were highly divided and that consideration of the issue involves complex ethical and social issues. They recommended a free vote of both Houses but stated that to inform the vote "the balance of view of this Committee is that it would be detrimental to remove entirely the requirement to take into account the 'need for a father'. Instead, we recommend that the current provision in section 13(5) on "(including the need of that child for a father)" should be retained but in an amended form in a way that makes clear it is capable of being interpreted as the 'need for a second parent' in line with the parenthood provisions currently in Part 3 of the draft Bill" (HL 169/HC 630, paragraph 243). The Government did not accept the recommendation (Cm 7209, paragraph 57).

Lord Adonis outlined the reasons for amending the wording of this provision in the recent debate on the Queen's Speech. He stated that "there is currently no ban on access to assisted reproduction in cases where there will not be a father". He continued "the current situation is unclear and the Government, having carefully considered whether research evidence supported the continued reference in primary legislation to a duty on clinicians to give specific attention to the need for a father, concluded that the findings of research in that area tend to show that the factor of prime importance is the quality of parenting, rather than parental gender per se. On balance, therefore, the Government have decided to remove the reference to the need for a father, but to retain in primary legislation a general duty to take account of the welfare of the child" (HL *Hansard*, 8th November 2007, cols. 231 and 232).

In response to the publication of the Bill, the Christian Medical Fellowship were critical of this provision, stating that "we oppose using IVF technology deliberately to create children without fathers. Medical and sociological evidence shows that children need fathers. This is recognised elsewhere in public policy and the proposals risk harming children and further undermining the concept of the family"(CMF Statement: Personal communication, 12th November 2007).

Stonewall, a group campaigning for equality for the lesbian, gay and bisexual community, have welcomed this proposed change in the law, stating that "the most important thing is for children to be raised in a stable and loving environment. Tens of thousands of children are already being

raised in stable lesbian and gay families. There is no credible evidence in relation to the welfare or development or future stability of the child to indicate that there is any justifiable reason for the state to insist on the need for a father as a prerequisite for fertility treatment" (Stonewall: Personal communication, 12th November 2007).

6. Parenthood

The 1990 Act contains provisions about the parenthood of children born as a consequence of assisted conception or surrogacy, defining those who have the legal status of 'mother' and 'father'. The Bill revises these parenthood provisions to put civil partners and other same-sex couples in the same position as married and unmarried heterosexual couples respectively. Clause 42 makes provision for female civil partners in line with that which applies to married couples, clauses 43 and 44 make provision for same-sex female couples not in a civil partnership in line with those for unmarried heterosexual couples and clause 54 extends the categories of couples who can apply for a parental order (fast track adoption) where a child has been conceived using a gamete of at least one of the couple, and has been carried by a surrogate mother. These new categories include same-sex couples, whether or not in a civil partnership, and unmarried heterosexual couples (*Explanatory Notes*, paragraphs 172–173 and 181).

The White Paper sets out the reasons why the Government proposed changes to these provisions:

> In undertaking its review of the HFE Act, the Government aimed to consider the extent to which changes may be needed to better recognise the wider range of people who seek and receive assisted reproduction treatment in the early 21st Century. The Government has also considered the impact of other legal changes that have occurred since the HFE Act came into force in 1991. For example, the coming into force of the Civil Partnership Act 2004 created a new legal relationship which two people of the same sex can form by registering as civil partners of each other. Important rights and responsibilities flow from forming a civil partnership including for civil partners to be assessed in the same way as spouses for child support.
>
> Also, whereas it has for many years been possible for a single person to adopt a child, recent changes have enabled unmarried and same-sex couples jointly to adopt children. Other relevant changes include the fact that an unmarried man can acquire parental responsibility for a child through jointly registering the birth together with the child's mother.
>
> (Cm 6989, paragraphs 2.67–2.68)

The Joint Committee summarised the approach taken as moving towards a "concept of parenthood as a legal responsibility rather than a biological relationship" (HL 169/HC 630, paragraph 263). Noting that the evidence taken on this issue indicated that it was a controversial approach, they highlighted opposition based on ethical concerns as well as a lack of clarity as to the meaning of the provisions. From the ethical viewpoint they noted the views of the Christian Institute which argued that the provisions were a "radical and dangerous new departure in family law" and the Family Education Trust who were deeply concerned by the "lego-kit model of family construction" in the draft Bill (*ibid*, paragraph 266). However, other groups including the BMA and the Royal College of Nursing were supportive of the changes. The BMA stated that their support was based on "the welfare of the child" and that they believed it was "in the interests of the children born to have a formal legal relationship with both parents who will be responsible for their care and upbringing" (HL 169/HC 630-II, Ev 07). The RCN commented that the change "reflects the civil marriages that are undertaken in the UK" and "from a nursing viewpoint this better reflects the patient experience and the diversity of patients attending fertility units" (HL 169/HC 630-II, Ev 38). The Joint Committee made no recommendations on

this particular element of the parenthood provision. A more detailed discussion of the issues can be found in House of Commons Library Standard Note: SN/HA/4492 *Legal parenthood, registration of births, and the Human Tissue and Embryos (Draft) Bill* (8th November 2007).

In response to the publication of the Bill, Stonewall has welcomed "the fact that civil partners will be recognised as a parent of a child conceived in their relationship. Stonewall believes that the most important thing is for children to be raised in a stable and loving environment. Many same-sex couples have children and it is timely that the law reflects this" (Stonewall: Personal communication, 12th November 2007).

Comment on Reproductive Ethics (CORE) have highlighted "worrying intentions to redefine parenthood", continuing that "the thrust of the Bill…has the rights of adults unfairly trumping the rights of children" (CORE, 'New human fertilisation and embryology bill – dark days ahead for democracy and the ordre public', 10th November 2007). In a similar vein, the Lawyers' Christian Fellowship (LCF) commented that "the Bill confers legal "parenthood" on couples undergoing assisted reproduction, even though they may be of the same gender and one, or indeed both, of them may have no biological relationship to the child. The result is that a legal fiction of "parenthood" will be created without any reference to biological reality. Unlike under the adoption process, this will be based on the preferences of adults, rather than the best interests of the child" (LCF, 'Deconstruction of a civilised society – ramifications of the Human Fertilisation and Embryology Act, 12th November 2007).

7. Abortion

The Joint Committee did not consider the issue of abortion as it did not form part of the Draft Bill but stated that:

> We were advised by the Clerk of Public Bills in the House of Lords and the Clerk of Legislation in the House of Commons that, if a Bill in terms similar to the draft Bill were to be introduced, amendments relating to termination of pregnancy (abortion), the retention of tissue samples and presumed consent for organ donation would in principle be orderly.
>
> (HL 169/HC 630, paragraph 2)

In June 2007 the House of Commons Science and Technology Committee decided to launch an inquiry after it was ruled that abortion would fall within the remit of the Bill (the 1990 Act had amended the Abortion Act 1967 most notably by reducing the upper time limit on most abortions from 28 weeks of gestation to 24 weeks). They reported on 31st October (*Scientific Developments Relating to the Abortion Act 1967*, HC 1045). The Committee recognised that scientific and medical evidence is only one of a number of factors that are taken into account when legislating on this issue and consequently did not make any recommendations as to how MPs should vote on abortion law, however they did reach a number of conclusions which they urged MPs to take into account when legislating on the issue. These are summarised in the press release announcing the report's publication:

> The Committee makes clear that its conclusions and recommendations are restricted to those issues capable of scientific evaluation and recognises that other factors also come into play when abortion law reform is being considered by Parliament.
>
> The Committee concludes that while survival rates at 24 weeks (the current upper limit for abortion) and over have improved since 1990, survival rates (viability) have not done so below that gestational point. The Committee concludes that there is no scientific basis–on the grounds on viability–to reduce the upper time limit.
>
> The Committee supports the removal of the requirement for two doctor's signatures before an abortion can be carried out. The Committee is concerned that the requirement for two signatures may be causing delays in access to abortion services and found no evidence of its value in terms of safety.
>
> Nurses and midwives with suitable training and professional guidance should not be prevented by law from carrying out all stages of early medical and early surgical abortion. The Committee says that it found there is no evidence that this would compromise patient safety or quality of care.
>
> On the issue of foetal pain, the Committee says the evidence suggests that while foetuses have physiological reactions to stimuli, this does not indicate that pain is consciously felt, especially not below 24 weeks. It further concludes that these factors may be relevant to clinical practice but do not appear to be relevant to the question of abortion law.

> While new 4D imaging techniques are a useful tool in diagnosis of foetal abnormality, there is no evidence they provide any scientific insights on the question of foetal sentience or viability.
>
> Any debate on the impact an alteration to the upper time limit would have on those women who present late for abortion would be better informed if there was improved collection of information relating to the reasons why women come forward at this late stage and about how many women travel overseas for late abortions.
>
> On the question of the merits of clarification or a definition of "seriously handicapped", the Committee does not consider that an exhaustive list of abnormalities is feasible, but believes that guidance on what "serious handicap" means would be helpful; and further that data collection in this area be improved.
>
> The Committee concludes there is no evidence relating to safety, effectiveness or patient acceptability that should deter Parliament from passing regulations which would enable women, who chose to do so, taking the second stage of early medical abortion at home. The Committee would like to see the necessary legislative change that would enable this to be pursued or at least piloted.
>
> It also recommends that the clinical guidelines on abortion provision, including health risks associated with abortion, should ultimately be taken over by the National Institute for Health and Clinical Excellence (NICE).
>
> (Science and Technology Committee Press Release No. 66 of Session 2006–07, 'Scientific Developments Relating to the Abortion Act 1967', 31st October 2007)

Two Conservative members of the Committee, Dr Bob Spink and Mrs Nadine Dorries, tabled a minority report, highlighting three specific issues:

> 1. Whether the legal upper limit for abortion of 24 weeks should be reduced on the basis of the scientific evidence about neonatal survival and fetal sentience.
>
> 2. Whether there should be a liberalisation of the law on first trimester abortion, especially with respect to nurses' involvement, premises or the requirement for two doctors' signatures, on the basis of scientific evidence on safety for women of the abortion procedure.
>
> 3. The implications of the above for the care, counselling, support and provision of fully informed consent to women seeking abortion.
>
> (HC 1045, page 71)

They continued:

> We also wish to highlight misgivings about how those giving oral evidence to the committee were selected and how ideological and financial interests have apparently shaped what has been included or ignored in written evidence submitted by specific organisations and individuals.

> We regret having to table this minority report but we feel it has become imperative because of the failure of the committee to properly engage with these key issues.
>
> (*ibid*)

It has been reported in the press, that MPs on both sides of the debate are planning to table amendments to the Bill in relation to abortion. Most notably Nadine Dorries, one of the Conservative members of the Select Committee who tabled the minority report, is reported to be working to agree cross-party amendments with Labour members to lower the time limit for abortions from 24 weeks to 20 weeks and Evan Harris, a Liberal Democrat member of the Select Committee, is reported to be preparing amendments to allow nurses to carry out terminations without supervision from a doctor (*Daily Telegraph* 'MP's try to cut abortion limit to 20 weeks', 9th November 2007).

Alive and Kicking, an alliance of 'pro life' organisations (including, amongst others, CARE, Christian Medical Fellowship, Comment on Reproductive Ethics, Guild of Catholic Doctors, Lawyers' Christian Fellowship and LIFE) is seeking a review of the abortion law in light of "new sociological, medical and scientific information relating to the practice of abortion". In response to the Bill they stated that "our near-term objective is to halve the yearly abortions through a variety of measures, including, an immediate, substantial reduction in the upper age limit for abortion and the elimination of discriminatory abortion of disabled babies up to birth… We are interested in the Human Fertilisation and Embryology Bill because it provides the first opportunity in seventeen years to amend the law and introduce measures that will lead to a reduction in the number of abortions" (Alive and Kicking Statement: Personal communication, 12th November 2007).

The political secretary of the Society for the Protection of the Unborn Child (SPUC) criticised the Science and Technology Committee report and called for the Bill to be voted down:

> This pro-abortion report and the committee's pro-abortion majority clearly shows that the pro-abortion lobby holds sway in Parliament. The possibility of abortion amendments to the government's human tissue and embryos bill poses the greatest danger of making the Abortion Act worse since 1990, when abortion up to birth was allowed and protection for viable unborn children was removed…
>
> Removing restrictions on abortions will lead to more abortion and more abortion-related damage to women. Easier access to abortion places women under psychological pressure to have abortions, leaving them even more vulnerable to the misinformation and pressure which often accompanies abortion. Pregnant women are often put under intense pressure and abortion can seem to be the only option. Experienced pregnancy counsellors report that many women and girls are making decisions to have abortions with little or no information about the development of their baby and the physical and psychological risks of abortion to themselves…
>
> The abortion procedure is unlike any other medical procedure–it involves killing unborn children. The nurse's role is to preserve and nurture life, not to destroy it. The proposal to turn nurses into abortionists will create further divisions and conflict between nurses opposed to abortion and those willing to participate in abortion procedures.

> This is a form of backstreet abortion and exposes women to both physical and psychological harm. Even RU486's manufacturers have admitted that this form of abortion is both more traumatic and just as risky for women.
>
> The removal of the requirement for two doctors to authorise abortion would be a step in the wrong direction. There are a number of ways in which the two doctors' signatures requirement can help save lives–such as the effect of stressing the doctor's duty to assess the legal justification for an abortion. The requirement is related to the Abortion Act's conscience clause–it provides another opportunity for conscientious objection in the form of a conscientiously objecting second doctor.
>
> (SPUC Press Release, 'Pro-abortion lobby holds sway in Parliament', 31st October 2007)

Following a vote at their annual conference in June 2007, the BMA have stated that they intend to push for amendments to the 1967 Abortion Act:

> We would like it to be amended so that, in the first trimester (up to 13 weeks), abortion would be available on the same basis of informed consent as other medical treatment. We also want the legal requirement for two doctors' signatures to confirm that the abortion meets the legal criteria to be removed in the first trimester.
>
> (BMA Press Release, 'BMA response to the Human Fertilisation and Embryology Bill', 9th November 2007)

The Family Planning Association (FPA) welcomed the conclusions and recommendations of the Science and Technology Committee report stating that:

> We are delighted that the Committee has found no scientific basis to reduce the time limit from 24 weeks. Women will continue to have the time that they need to decide with dignity, whether to continue with a pregnancy or not.
>
> Forcing women to ask the permission of two separate doctors before she can have an abortion is antiquated, unnecessary and patronising. The Committee are completely right to support the removal of this requirement.
>
> We recognise that nurses have a huge role to play in every part of abortion provision. We endorse the Committee's findings that suitably trained nurses should be able to carry out early medical and surgical abortions in Britain, as they do in other countries.
>
> We very much welcome the Committee's recommendation that women should be able to choose whether to have the second stage of medical abortion at home. This is an important matter for women and again this would bring Britain in line with the normal practice of other countries, such as the United States.
>
> (FPA Press Release, 'fpa welcomes Science and Technology Committee findings on abortion', 31st October 2007)

Abortion Rights which is a national pro-choice campaign have commented that the Bill will provide an opportunity to improve women's abortion rights. They set out their intention to work to ensure that:

- Abortion be available solely at the request of the pregnant woman within existing legal time limits.
- Abortion services are subject to the same statutory regulations as other medical services (i.e. ending the need for detailed notification to the Department of Health and certification by doctors of all abortions; and removing the need for premises to be specially licensed by the DOH to carry out abortions).

- Suitably trained nurse practitioners be allowed to carry out early medical and surgical abortions, in both the NHS and non-NHS sector.

- The law in Northern Ireland be brought into line with the rest of the UK.

(Abortion Rights Statement: Personal communication, 12th November 2007)

During the debate on the Queen's Speech in the House of Lords, all parties confirmed that their members would be given a free vote on any amendments relating to abortion (HL *Hansard*, cols. 148, 151 and 232, 8th November 2007).

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