



Human Fertilisation and Embryology Bill - What Happened?

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This Note describes the passage of the *Human Fertilisation and Embryology Bill* 2008 through Parliament. Further details are in two Library Research Papers: [Human Fertilisation and Embryology Bill \[HL\]](#) and [Human Fertilisation and Embryology Bill \[HL\]: Committee Stage Report](#). Copies of the Bill at its various stages, Parliamentary Debates on it and other material relating to its passage are available on the [Parliamentary Public Bill Page](#).

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1 Introduction

The *Human Fertilisation and Embryology Bill* will revise and update legislation for assisted reproduction and also change the regulation and licensing of the use of embryos in research and therapy. It includes provision for research on different types of embryos, and proposes changes to definitions of legal parenthood for cases involving assisted reproduction.

The *Human Fertilisation and Embryology Act 1990* (as amended) provides the current legislative framework. It was largely based on a Committee of Inquiry, appointed in 1982, chaired by Baroness Warnock. The Committee’s Report (the Warnock Report) was published in 1984.

A draft Bill, the *Human Tissue and Embryos Bill*, was scrutinised by a Joint Committee of both Houses. Some changes proposed to the Human Tissue Act, such as the establishment of a new body called Regulatory Authority for Tissue and Embryos (RATE), have been dropped. The change in the name of the Bill reflects that change.

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 Human Fertilisation and Embryology (HFEA) collected data to make it easier to do follow-up research;
- provisions clarifying the scope of legitimate embryo research activities, including regulation of “inter-species embryos” (embryos combining human and animal material).

2 House of Lords Stages

Legislation was brought to the House of Lords, following a change in the proposed title, in the Human Fertilisation and Embryology Bill. [Human Fertilisation and Embryology Bill Paper](#), produced by the House of Lords Library, describes the Bill as it entered that House.

2.1 Summary of Lords Amendments

The Bill passed through the Lords mostly unchanged though two notable Government amendments were passed.

- The term “inter-species embryos”, which was used to describe human/animal hybrid embryos, was replaced by “human admixed embryos” throughout the Bill.
- The Bill removes the requirement of a doctor to consider the need of a child for a father before fertility treatment is undertaken.

3 House of Commons Stages

The Bill was read for the first time in the Commons on 5 February 2008 and published the following day as [HL Bill 70](#). [Explanatory Notes](#) to this are available.

The Second Reading was on 12 May 2008 at which time the Secretary of State for Health, Alan Johnson, set out the aim of the Bill.

The purpose of the Bill is to ensure that the 1990 Act is revised to keep pace with new avenues of scientific research and to reflect wider change in our society. As with the 1990 Act, the Bill has been the subject of careful consideration and lengthy consultation involving the public, scientists, faith groups and, of course, Members from both sides of the House and from the other place.

In 2004, following reports by the Science and Technology Committee and the expert group convened by the Government to consider how existing legislation could accommodate and regulate new developments in stem cell research, we announced a review of the 1990 Act. A public consultation then took place in 2005, which led to a White Paper in December 2006. The Bill was then published in draft form for scrutiny by a Joint Committee drawn from both Houses. I am grateful to all the right hon. and hon. Members of this House and noble Lords and Ladies from the other place who have given this Bill the benefit of their expertise, including, of course, Baroness Warnock herself, who continues to keep a close eye on the legislation that she so skilfully instigated.¹

Debate during Second Reading concentrated on the most controversial aspects of the Bill; those relating to “saviour siblings”, “admixed embryos”, “need for a father” and abortion. The

¹ HC Deb 12 May 2008 c1066.

Bill was passed at Second Reading on division (Ayes 340, Noes 78).² A Programme Motion came at the end of the debate which committed clauses 4, 11, 14 and 23 and Schedule 2 of the Bill covering issues of "saviour siblings", "admixed embryos" and "need for a father" and new clauses or schedules relating to abortion to a Committee of the whole House. The remainder of the Bill was committed to a Public Bill Committee.

3.1 Free Votes

Members from all sides of the House called for free votes on all sections of the Bill. In particular, pressure from Catholic Labour Members, calling for a free vote, was reported in the press.³ On March 25 2008 the Prime Minister announced there would be free votes for Labour MPs on the following areas of the Bill:

- Preventing fertility clinics from refusing treatment to single women and lesbians.
- Creating a "saviour sibling" with the correct tissue match to save a sick brother or sister.
- Creating hybrid animal/human embryos to aid stem cell research.

Andrew Lansley, the Shadow Health Secretary announced that Conservative Members would be allowed a free vote on the entire Bill.⁴ A free vote was also reported for Liberal Democrat Members.⁵

3.2 Committee of the whole House

Contentious aspects of the Bill were discussed in a Committee of the whole House on 19 and 20 May 2008. Free votes were given at this stage by the Labour, Conservative and Liberal Democrat Parties.

Admixed Embryos

The Bill includes proposals to clarify policy on the creation of human-animal embryos. These are embryos created using both animal and human material. They can be used to research embryonic stem cells which could potentially be used to treat a range of degenerative illnesses. The Bill will amend the *Human Fertilisation and Embryology Act 1990* (HFE Act) to ensure that the creation, storage and use of admixed embryos is regulated by the HFEA.

Saviour Siblings

A "saviour sibling" is one which is able to be used to provide some treatment for an existing child. The most common example of this being parents who have one child suffering from a condition which needs a bone marrow transplant. Currently this would involve using in vitro fertilisation (IVF) to create several embryos, then checking the genetic make up of those embryos and implanting one with the desired (or without the undesired) characteristics. The Explanatory Notes to the Bill described the circumstances under which tissue typing would be allowed.⁶

² HC Deb 12 May 2008 c1161.

³ BBC website, [Labour MPs may rebel over embryos](#), 21 March 2008.

⁴ Conservative Party, [Brown still dithering over free vote on Embryology Bill](#), 25 March 2008

⁵ Religion doesn't rule in this clash of moral universes, *Guardian*, 25 March 2008

⁶ [Human Fertilisation and Embryology Bill: Explanatory Notes](#)

Need for a Father

Section 13 of the HFE Act mandates a doctor to consider the welfare of any child that may be created by IVF. 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.

As introduced, clause 14(2) of the Bill would have omitted from Section 13(5) of the HFE Act “including the need of that child for a father”. This was amended by the Government during the Lords Report Stage. Now clause 14(2) of the Bill amends the reference to a child’s need for a father so that the licence condition to be imposed under section 13(5) of the HFE Act would refer instead to the child’s need for “supportive parenting”. This was a contentious clause which attracted interest from lobbying groups calling for its removal. Equally organisations calling for equal rights for same sex couples have welcomed the progress of the Bill.

Abortion

The Government did not seek to change the abortion laws using the *Human Fertilisation and Embryology Bill*. However, amendments to abortion law could have been accepted during the passage of the Bill, as the *Abortion Act 1967* was amended by the HFE Act⁷ which the Bill is to amend. During the Committee of the whole House the legislation was not changed.

3.3 Public Bill Committee

The remainder of the Bill was committed to a Public Bill Committee which sat on eight occasions.

72 Government amendments were agreed to but no new clauses were included by the Government. Most of these amendments were consequential and many relate to a rewording of the terminology used to describe classes of people within the Bill.⁸

No opposition amendments were successful and no opposition new clauses were introduced.

The Bill was not changed greatly by the Committee. Most significantly Government amendments on the use and storage of cells from those lacking capacity (either as children or adults) or where the donor can no longer be identified or has died were agreed to.

3.4 Report Stage and Third Reading

The Report Stage of the Bill was delayed until the return of the House after the Summer Recess. By this time a long list of amendments had been tabled on the Bill. The most widely reported amendments in the press were those that would amend abortion law. These included new clauses to:

- Remove the legal requirement for two doctors’ signatures to authorise abortions.
- Allow trained nurses and other health care practitioners to carry out abortions.
- Extend the locations where abortions can take place to primary care level.

⁷ *Human Fertilisation and Embryology Act 1990* section 37

⁸ “P” replaced the term “patient” and “C” replaced the term “child donor” in many parts of the Bill.

- Remove conscientious objection in respect to providing emergency contraception provision.
- Extend the 1967 Abortion Act to Northern Ireland.

The Report Stage debate began with a programme motion that moved debate on new clauses to the end of the proceedings. This effectively prevented any of the abortion law amendments from being heard. The Minister, Dawn Primarolo, explained why this was done.

Today is the last opportunity for the House to debate the Bill before it returns to the other place for consideration of the amendments that we have made. We have amendments for debate today that cover embryo research, the definition of embryos, the parenthood of people who receive assisted reproduction treatment, and saviour siblings. These matters go to the very heart of the Bill and they need consideration before it finally leaves this Chamber.⁹

A number of other MPs spoke against the motion; this included the following contribution from Diane Abbot:

I speak against the programme motion because—and I say this with no pleasure—it and the order of discussion appear to be a shabby manoeuvre by Ministers to stop the full debate of some very important matters. I appreciate that Ministers did not intend this to be a Bill about abortion. I am open to the argument that we should have another piece of legislation that would enable a full debate on most of the matters in relation to abortion that have been raised as amendments and new clauses to the Bill, but there is a special case for debating and voting on the particular new clause that I tabled to extend the 1967 Act to Northern Ireland.¹⁰

The Programme motion was passed and the Bill proceeded through its Report Stage. The Bill was passed to Third Reading with no opposition amendments accepted. A number of minor Government amendments were made. All the Commons amendments were accepted by the Lords.

Divisions¹¹

The following divisions were held:

Division Number 283; Ayes 322, Noes 157. [HC Deb, 22 October, c335](#).

A programme motion to provide that amendments on embryo research, definitions of embryos, parenthood of people who receive assisted reproduction and saviour siblings were debated at Report Stage. This put amendments on abortion law towards the back of the queue and effectively meant they would not be debated.

Division Number 284 on Amendment 49; Ayes 215, Noes 299. [c 389](#).
Tabled by Dr John Pugh.

An amendment that would limit the types of techniques that could be used if subsequent regulations were passed allowing for the alteration of a cell used in assisted reproduction to prevent mitochondrial disease. This aimed to prevent an embryo or egg's nuclear DNA from being altered while allowing its mitochondrial DNA to be altered.

⁹ HC Deb 22 October 2008 c324

¹⁰ HC Deb 22 October 2008 c327

¹¹ **Links are to web pages, scroll down the page to the correct division number**

Division Number 285 on Amendment 41; Ayes 206, Noes 298. [c393](#)
Tabled by David Drew

An amendment to attempt to clearly set out that eggs or embryos that have been genetically altered can not be used in assisted reproduction.

Division Number 286 on Amendment 47; Ayes 194, Noes 306. [c397](#)
Tabled by David Burrowes

An amendment to ensure that a type of animal/human hybrid embryo not specifically detailed in the bill is regulated by the HFEA.

Division Number 287 on Amendment 50; Ayes 183, Noes 308. [c 403](#).
Tabled by Dr John Pugh

This is consequential to an amendment that would prohibit placing human sperm or eggs in an animal.

Division Number 288; Ayes 355, Noes 129. [c 411](#).
That the Bill proceeds to Third reading and is passed with amendments made.

Minster's Response

The Minister responds to each of the above amendments:

Amendments Nos. 41, 49 and 73 seek to restrict the provisions in the Bill that aim to prevent the transmission of mitochondrial diseases. Research is currently being carried out, under a Human Fertilisation and Embryology Authority licence, on ways to avoid those devastating diseases. To remind ourselves, we are talking about dementia, respiratory problems, gastro-intestinal disorders, stroke and brain atrophy. In recognition of the severity of those conditions and the potential for such research to provide effective treatment, the Bill provides, through a regulation-making power, for eggs or embryos that have had applied to them a specific process enabling them to avoid serious mitochondrial diseases to be considered "permitted". They can therefore be used in treatment. The particular process and the circumstances in which that would be appropriate would be detailed in regulation. I take the caution given by the hon. Member for Oxford, West and Abingdon (Dr. Harris) about acknowledging the sensitivities and difficulties in that area.

The safety of using the techniques has not yet been established. They would need to be assessed carefully before being deployed as options for patients in treatment. The regulating power would allow for that consideration through a full consultation, to gather the views of the public, ethicists and relevant stakeholders on the appropriate use of using donor eggs for that purpose. For example, as some hon. Members have pointed out today, and as has been raised in the House before, there would need to be consideration about the status of the egg donor if donations from which only the mitochondria is used were made.¹²

[...]

Amendment No. 41 seeks to limit the regulating powers so that embryos or eggs that have undergone cell nuclear replacement could not be permitted for use in treatment. Following debate in another place and in this House, the Government carefully considered the drafting of proposed new section 3ZA of the Human Fertilisation and Embryology Act 1990, and whether it needed to be amended.

¹² HC Deb 22 October 2008 c385

After careful consideration, the Government's view is that the drafting is clear and does not require amendment. The precise process by which mitochondrial diseases may be treated is not yet clear, and amendment to the regulating powers would inadvertently risk and reduce the scope and the process for treatments to be allowed. Secondly, the regulation-making power is limited to the treatment of mitochondrial diseases only. Thirdly, the regulations would be subject to considerable public consultation and then to debate in Parliament. That would enable all the concerns to be raised. In taking that forward, the Government are balancing the need to have the facts before taking decisions with the recognition that the power is about helping couples conceive a child that is genetically theirs, but without the fatally flawed mitochondria that affect the maternal line. That is the balance that we are trying to strike; we have left things open for further consideration. That is why we are proceeding as we are.¹³

[...]

Amendment No. 49 seeks to limit the regulating power so that only embryos or eggs that have been subjected to processes to prevent the transmission of mitochondrial diseases through cytoplasm could be permitted for use in the treatment. I absolutely understand and appreciate the intention behind it. I have to say, however, that the amendment is ambiguous—a point that has been touched on in the debate. Everything in a cell could be considered to be cytoplasm, including the mitochondria and the nucleus, and restricting regulating powers to prevent the transmission of serious mitochondrial diseases via the cytoplasm would not necessarily achieve the aim of excluding transmission via the cell's nucleus. For that reason, there was no need to put the amendment before the House.

There are other more appropriate ways in which mitochondrial disease transmitted via a cell's nucleus could be treated. We are looking specifically, through pre-implantation, at genetic diagnosis of the embryo. On that basis, I hope that the hon. Member for Southport (Dr. Pugh) will accept that we are attempting to strike the right balance, while leaving open the final decisions until the information is available and this House has taken a final view, following consultation.¹⁴

[...]

Amendment No. 50 and new clause 24 would introduce a regulating power that requires the Secretary of State to make it an offence to place human gametes in an animal. The Bill does not change the legal position achieved by the 1990 Act, which made no prohibition on the artificial insemination of an animal with human sperm. Such a prohibition was believed unnecessary at the time because of the inability for humans and animals to produce offspring successfully. Equally, the 1990 Act legislated on the creation of human embryos in vitro and on reproductive services. The subject matter was very different from that of the artificial insemination of animals. Since 1990, our knowledge of the ability of humans and animals to procreate has not changed, and there is still no published evidence to suggest that any insemination of an animal with human sperm, whether as part of a scientific study or not, has resulted in pregnancy. Members touched on the regulations that exist and support the legislation in the Animals (Scientific Procedures) Act 1986. The Government believe that the combination of the existing legislation in this area is sufficient, and we are not aware of any developments that require revision of that position.¹⁵

[...]

Amendment No. 47 seeks to add a further category to the existing categories. Hon. Members have talked about their fear of a loophole that needs to be closed. In looking at the range of issues that have been raised, the Government believe that the embryo created by the process that I have described should be considered as a human

¹³ HC Deb 22 October 2008 c386

¹⁴ HC Deb 22 October 2008 cc386-7

¹⁵ HC Deb 22 October 2008 c387

admixed embryo, which is regulated under the definition in proposed new section 4A(6)(e) of the 1990 Act, so there is no loophole.

In conclusion, let me return to the point about cloning. The Government are absolutely clear that we are committed to banning human reproductive cloning, and the Bill continues to provide for that.¹⁶

4 What Happens Next

Most of the provisions in the Bill will be brought into force by a commencement order made by the Secretary of State.

Other provisions will require further secondary legislation that details exactly how the broad themes of the bill will be introduced.

Furthermore many of the process licensed by the Bill require guidance that will need to be produced by the regulating authority the HFEA.

A Parliamentary Question provides the following detail:

Human Fertilisation and Embryology Act

Mr. Amess: To ask the Secretary of State for Health when he expects to bring the Human Fertilisation and Embryology Act into force; and if he will make a statement. [233902]

Dawn Primarolo: It is intended that the majority of the provisions in the Human Fertilisation and Embryology Bill will be commenced in October 2009. It is planned that the provisions relating to parenthood in part 2 (and related consequential provisions) of the Bill will be commenced in April 2009 and that provisions relating to parental orders will be commenced in April 2010.¹⁷

5 Stages of the Bill Summary

Lords Stages

- First Reading: November 8 2007 [[HL Bill 6](#)]
- Second Reading: [November 19 2007](#) (debate adjourned)
 - Resumption of Second Reading: [November 21 2007](#)
- Grand Committee:
 - 1st day: [December 3 2007](#)
 - 2nd day: [December 4 2007](#)
 - 3rd day: [December 10 2007](#)
 - 4th day: [December 12 2007](#)
- Report Stage:
 - 1st day: [January 15 2008](#)
 - 2nd day: [January 21 2008](#)
 - 3rd day: [January 28 2008](#)
- Bill as amended: [HL Bill 25](#)
- Third Reading: [February 4 2008](#)
 - Resumption of Third Reading: [February 4 2008](#)

¹⁶ HC Deb 22 October 2008 c388

¹⁷ HC Deb 10 November 2008 c833W

Commons Stages

- First Reading: 5 February 2008 [[HL Bill 70](#)]
- Second Reading: [12 May 2008](#)
- Committee of the Whole House:
 - 1st day: [19 May 2008](#)
 - 2nd day: [20 May 2008](#)
- Public Bill Committee:
 - 1st session: [3 June 2008 \(am\)](#)
 - 2nd session: [3 June 2008 \(pm\)](#)
 - 3rd session: [5 June 2008 \(am\)](#)
 - 4th session: [5 June 2008 \(pm\)](#)
 - 5th session: [10 June 2008 \(am\)](#)
 - 6th session: [10 June 2008 \(pm\)](#)
 - 7th session: [12 June 2008 \(am\)](#)
 - 8th session: [12 June 2008 \(pm\)](#)
- Bill as amended in Committee and Public Bill Committee [[Bill 120](#)]
- Report Stage and Third Reading: [22 October 2008](#)

Returned to the Lords

- [29 October 2008](#)

Additional materials including Amendment Papers and Proceedings are available on the [Parliamentary Public Bill Page](#).