

Human Fertilisation and Embryology (Disclosure of Information) Bill 1992.

Contributors

Great Britain. Parliament. House of Lords.

Publication/Creation

London : H.M.S.O., [1992], ©1992.

Persistent URL

<https://wellcomecollection.org/works/dm4azbna>

**wellcome
collection**

Wellcome Collection
183 Euston Road
London NW1 2BE UK
T +44 (0)20 7611 8722
E library@wellcomecollection.org
<https://wellcomecollection.org>

JP - 9 JUN 1992 2319

Wellcome Centre for Medical Science

Human Fertilisation and Embryology (Disclosure of Information) Bill [H.L.]

EXPLANATORY MEMORANDUM

This Bill relaxes the restriction on disclosure contained in section 33(5) of the Human Fertilisation and Embryology Act 1990 ("the 1990 Act"). That provision relates to the disclosure, by a person to whom a licence under the 1990 Act applies, of information falling within section 31(2) of the 1990 Act.

Section 33(6) of the 1990 Act contains exceptions to the general restriction. This Bill adds further exceptions, removing the criminal sanction from disclosure in specified circumstances and for particular purposes. It also contains a regulation-making power, permitting the making of regulations (subject to the affirmative procedure) whereby further exceptions can be made to section 33(5).

Clause 1 contains the substance of the changes made by the Bill.

Subsection (2) inserts three new paragraphs, (f) to (h), in section 33(6) of the 1990 Act. Paragraph (f) relates to the necessary disclosure of information before or in connection with proceedings. Paragraph (g) relates to disclosures in connection with applications for parental orders under section 30 of the 1990 Act. Paragraph (h) relates to disclosure of health records under the Access to Health Records Act 1990.

Subsection (3) inserts subsections (6A) to (6G) after section 33(6) of the 1990 Act. Subsection (6A) restricts the information to which paragraph (f) (inserted by clause 1(2) of the Bill) applies. Subsections (6B), (6C) and (6D) relate to disclosure with the consent of the person or persons to whom the information relates. Subsection (6E) relates to disclosure in a medical emergency. Subsection (6F) relates to disclosures which are necessarily incidental to disclosure with consent or in an emergency. Subsection (6G) contains an affirmative regulation-making power to provide for further exceptions to section 33(5) of the 1990 Act. The power is limited by reference to the same restrictions as apply to disclosure of information in connection with proceedings, and in addition cannot be used to provide for disclosure in circumstances in which section 32 of the 1990 Act applies (section 32 relates to information to be provided to the Registrar General in cases of dispute).

Subsection (4) defines "proceedings" to include complaints procedures and subsection (5) makes clear that the relaxation effected by the Bill applies to information obtained before, as well as after, its passing.

Clause 2 provides for the short title, for any regulations made by virtue of the inserted section 33(6G) to be subject to the affirmative procedure, for the extension of the Bill (apart from the provision relating to the Access to Health Records Act 1990) to Northern Ireland, and for the extension of the Bill to the Channel Islands.



2881 111 8-

ii *Human Fertilisation and Embryology (Disclosure of Information)*

Financial effects of the Bill

The Bill has no implications for public funds.

WELLCOME LIBRARY
General Collections
P
4728

A

B I L L

INTITULED

An Act to relax the restrictions on the disclosure of information A.D. 1992.
imposed by section 33(5) of the Human Fertilisation and
Embryology Act 1990.

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

5 1.—(1) Section 33 of the Human Fertilisation and Embryology Act Relaxation of
1990 (subsection (5) of which prohibits disclosure of information falling section 33(5) of
within section 31(2) of that Act by a person to whom a licence under the Human
Schedule 2 to that Act applies or to whom directions under section 23 of Fertilisation and
that Act have been given) shall be amended as mentioned in subsections Embryology Act
10 (2) to (4) below. 1990.

(2) In subsection (6) (general exceptions from subsection (5)) the word
“or” at the end of paragraph (d) is hereby repealed and at the end there
shall be inserted—

“(f) necessarily—

15 (i) for any purpose preliminary to proceedings, or
(ii) for the purposes of, or in connection with, any
proceedings,

20 (g) for the purpose of establishing, in any proceedings relating
to an application for an order under subsection (1) of
section 30 of this Act, whether the condition specified in
paragraph (a) or (b) of that subsection is met, or

(h) under section 3 of the Access to Health Records Act 1990 1990 c. 23.
(right of access to health records).”

(3) After subsection (6) there shall be inserted—

25 “(6A) Paragraph (f) of subsection (6) above, so far as relating to
disclosure for the purposes of, or in connection with, any
proceedings, does not apply—

30 (a) to disclosure of information enabling a person to be
identified as a person whose gametes were used, in
accordance with consent given under paragraph 5 of

2 *Human Fertilisation and Embryology (Disclosure of Information)*

Schedule 3 to this Act, for the purposes of treatment services in consequence of which an identifiable individual was, or may have been, born, or

- (b) to disclosure, in circumstances in which subsection (1) of section 34 of this Act applies, of information relevant to the determination of the question mentioned in that subsection. 5

(6B) In the case of information relating to the provision of treatment services for any identifiable individual—

- (a) where one individual is identifiable, subsection (5) above does not apply to disclosure with the consent of that individual; 10

- (b) where both a woman and a man treated together with her are identifiable, subsection (5) above does not apply—

(i) to disclosure with the consent of them both, or 15

(ii) if disclosure is made for the purpose of disclosing information about the provision of treatment services for one of them, to disclosure with the consent of that individual.

(6C) For the purposes of subsection (6B) above, consent must be to disclosure to a specific person, except where disclosure is to a person who needs to know— 20

- (a) in connection with the provision of treatment services, or any other description of medical, surgical or obstetric services, for the individual giving the consent, 25

- (b) in connection with the carrying out of an audit of clinical practice, or

- (c) in connection with the auditing of accounts.

(6D) For the purposes of subsection (6B) above, consent to disclosure given at the request of another shall be disregarded unless, before it is given, the person requesting it takes reasonable steps to explain to the individual from whom it is requested the implications of compliance with the request. 30

(6E) In the case of information which relates to the provision of treatment services for any identifiable individual, subsection (5) above does not apply to disclosure in an emergency, that is to say, to disclosure made— 35

- (a) by a person who is satisfied that it is necessary to make the disclosure to avert an imminent danger to the health of an individual with whose consent the information could be disclosed under subsection (6B) above, and 40

- (b) in circumstances where it is not reasonably practicable to obtain that individual's consent.

(6F) In the case of information which shows that any identifiable individual was, or may have been, born in consequence of treatment services, subsection (5) above does not apply to any disclosure which is necessarily incidental to disclosure under subsection (6B) or (6E) above. 45

(6G) Regulations may provide for additional exceptions from subsection (5) above, but no exception may be made under this subsection—

5 (a) for disclosure of a kind mentioned in paragraph (a) or (b) of subsection (6A) above, or

(b) for disclosure, in circumstances in which section 32 of this Act applies, of information having the tendency mentioned in subsection (2) of that section.”

(4) At the end there shall be inserted—

10 “(8) In subsection (6)(f) above, references to proceedings include any formal procedure for dealing with a complaint.”

(5) This section applies in relation to information obtained before, as well as in relation to information obtained after, the passing of this Act.

15 2.—(1) This Act may be cited as the Human Fertilisation and Embryology (Disclosure of Information) Act 1992. Short title etc.

(2) In section 45(4) of the Human Fertilisation and Embryology Act 1990, after “31(4)(a),” there shall be inserted “33(6G),” 1990 c. 37.

(3) This Act (except section 1(2), so far as relating to the inserted section 33(6)(h)) extends to Northern Ireland.

20 (4) In section 48(1) of the Human Fertilisation and Embryology Act 1990 (extent to Northern Ireland) for “section” there shall be substituted “sections 33(6)(h) and”.

25 (5) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend, with such exceptions, adaptations and modifications (if any) as may be specified in the Order, to any of the Channel Islands.

(6) Regulations may provide for additional exceptions from subsection (2) above, but no exception may be made under this subsection—

- (a) the disclosure of a kind mentioned in paragraph (a) or (b) of subsection (1) above or
 - (b) the disclosure in circumstances in which section 22 of this Act applies of information derived from the leading mentioned in subsection (2) of that section.
- (4) At the end thereof shall be the words—

"(2) This section applies in relation to information obtained or to be obtained in relation to information of the kind mentioned in subsection (1) above, but not in relation to information of the kind mentioned in subsection (2) above."

2-4) The Act may be amended so as to include in section 22 of the Act (Disclosure of Information) the following—

- (3) The Act (except section 10) so far as relating to the inserted section shall extend to Northern Ireland.
- (4) In section 28(1) of the Human Fertilisation and Embryology Act 1987 (extent to Northern Ireland) for "section 22" there shall be substituted "sections 22 and 22A".
- (5) The Minister may by Order in Council direct that any of the provisions of the Act shall extend, with such exceptions, adaptations and modifications as may be specified in the Order, to any of the Channel Islands.

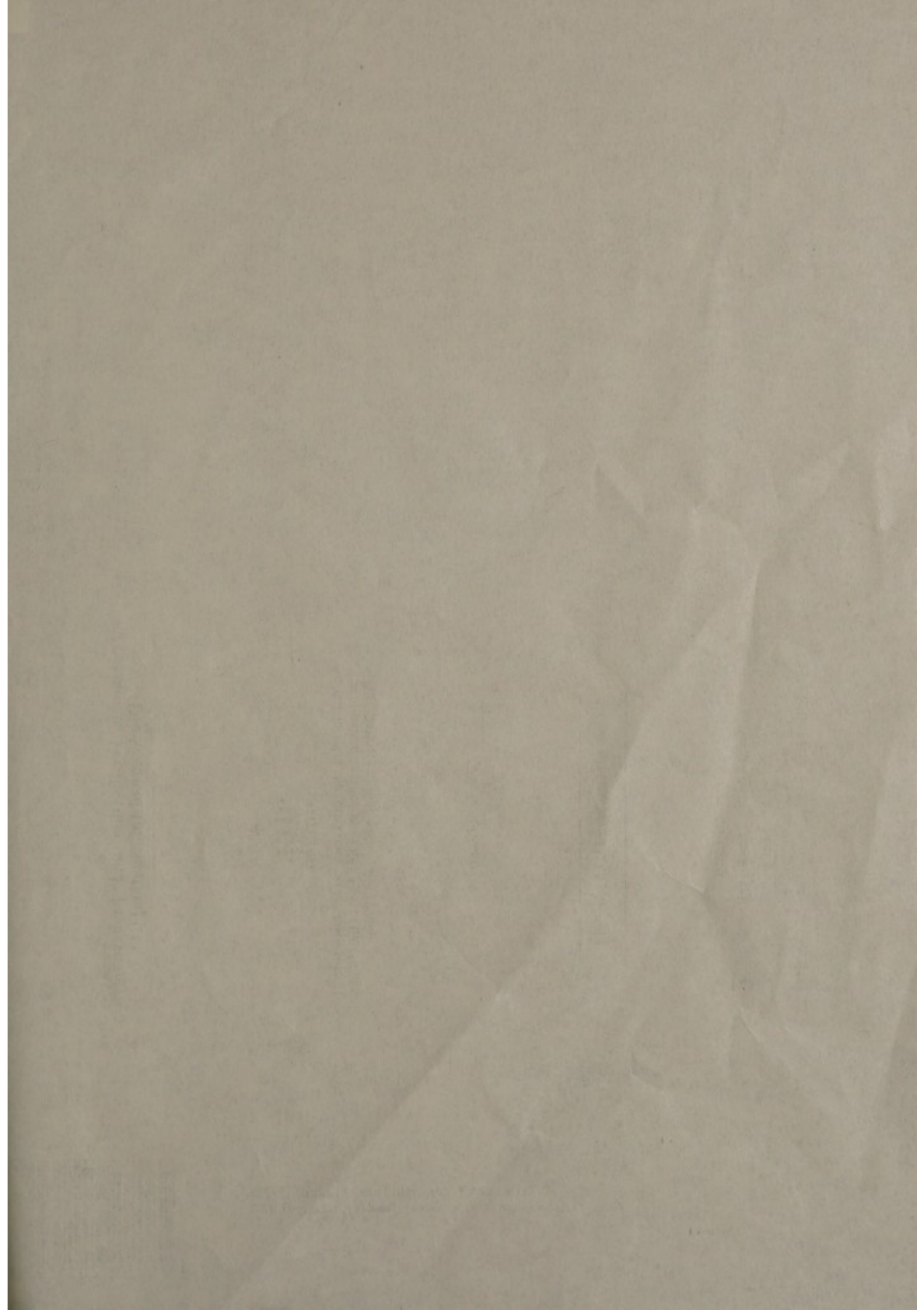
The Minister may by Order in Council direct that any of the provisions of the Act shall extend, with such exceptions, adaptations and modifications as may be specified in the Order, to any of the Channel Islands.

The Minister may by Order in Council direct that any of the provisions of the Act shall extend, with such exceptions, adaptations and modifications as may be specified in the Order, to any of the Channel Islands.

The Minister may by Order in Council direct that any of the provisions of the Act shall extend, with such exceptions, adaptations and modifications as may be specified in the Order, to any of the Channel Islands.

The Minister may by Order in Council direct that any of the provisions of the Act shall extend, with such exceptions, adaptations and modifications as may be specified in the Order, to any of the Channel Islands.

The Minister may by Order in Council direct that any of the provisions of the Act shall extend, with such exceptions, adaptations and modifications as may be specified in the Order, to any of the Channel Islands.



**Human Fertilisation and Embryology
(Disclosure of Information) [H.L.]**

**A
BILL**

INTITULED

An Act to relax the restrictions on the disclosure of information imposed by section 33(5) of the Human Fertilisation and Embryology Act 1990.

The Lord Chancellor

Ordered to be Printed, 20th May 1992

LONDON: HMSO
Printed in the United Kingdom by HMSO

£1.45 net

HL Bill 11

(401139)

51/1

© Parliamentary copyright House of Lords 1992
Applications for reproduction should be made to HMSO

ISBN 0-10-870113-1



9 780108 701139