HUMAN ASSISTED REPRODUCTIVE TECHNOLOGY BILL

EXPLANATORY NOTE

Human Assisted Reproductive Technology refers to a wide range of medical activities which assist people to conceive and have children. It includes *in vitro* fertilisation, and issues of surrogacy and genetic screening.

AIM OF BILL

To formulate a legal framework for restrictions and controls on assisted reproductive technology in New Zealand—in line in particular with British and Canadian laws, and to prevent some of the problems and court cases experienced in the United States of America.

To protect the rights of children, and the rights of women (birth mothers) as well as donors (men and women).
To guide medical professionals.

MAIN POINTS OF BILL

(1) To license clinics
(2) to keep centralised records
(3) to prevent cloning
(4) to outlaw the sale of babies and body parts/tissue/fluids.

The bill does not forbid, but controls
(a) *in vitro* fertilisation, and
(b) surrogacy (largely covered by the Adoption Act 1955 and the Status of Children Act 1969).

The bill is modelled on British, Canadian, and Australian legislation.

Ref: *Assisted Human Reproduction*
Navigating our Future
Report of the Ministerial Committee on Assisted Reproduction Technologies July 1994.
Prepared for the Ministry of Justice by Dr Paparangi Reid and Mr Bill Atkin.

No. 195—1

Price Code: J

Background

The purpose of this bill is to introduce legislation to clarify the ethical propriety of medical practice relating to human reproductive technology and the provision of infertility services, research and surrogacy practices in New Zealand.

The bill will

- — establish a licensing authority
- — establish record keeping requirements and pass legislation relating to access to records
- — prohibit certain practices in relation to the commercialisation/sale of body parts, embryos, gametes, foetal tissue etc.
- — prohibit improper use of reproductive technology and surrogacy.

The bill has three main features:

Licensing: Includes the establishment of a *licensing authority* in order to regulate and ensure proper monitoring of services. The licensing would prohibit improper use of reproductive technology and surrogacy (as defined in the bill and attached schedules). With the increase in the number of private clinics being established there is need for a central regulatory body in New Zealand.

Commercialisation: To ban the *commercialisation* or sale of body parts, blood, embryos, gametes, foetal tissue, foetuses, babies. While much of this is covered in other Acts (the Human Tissue Act 1964 and Adoption Act 1955 in New Zealand) there was a need to incorporate the use of "live renewable and replaceable" body parts, along with aspects of the UK Human Organ Transplants Act 1989. The bill incorporates ethic values about the nature of human life and the inadvisability of placing monetary value on human life.

Records: While Adoption Acts in New Zealand require that Social Welfare keep records, there is insufficient legislation at present to cope with the multiple parenting possible with the use of modern reproductive technology. With the increase in the number of private clinics offering fertility services there is a need for centrally kept *records* in order to ascertain:

- — access to records by children, and parents (for health as well as social/identity reasons)
- — permanency of records—should clinics discontinue for whatever reason
- — and to regulate donors—i.e. frequency of donating and proliferation of genetic influences in a small society.

ANALYSIS

PART I:

1. ACTIVITIES GOVERNED BY THE ACT

No person shall
(a) bring about the creation of any embryo, or
(b) keep or use an embryo except in pursuance of a licence.

No person shall place in a woman
(a) a live embryo other than a human embryo, or
(b) any live gametes other than human gametes.

2. NON-COMMERCIALISATION:

The purpose of clauses 9 and 10 is to forbid the sale of human parts, embryos, gametes, and also relates of surrogacy and, as with adoption, should prevent the sale of human babies—the placing of a price on embryos. (To outlaw commercial surrogacy ref. South Australia Family Relation Act Amendment 1988 but this bill will revise the sanctions.)

Ref. p. 22, 23 of the NZ Medical Council 1991 paper and the NZ Human Tissue Act 1964, Human Organ Transplant Act 1989 (UK).

PART II:
Establishes a licensing authority.

1. There shall be a HUMAN ASSISTED REPRODUCTIVE TECHNOLOGY AUTHORITY
2. The AUTHORITY shall consist of
   - — two members with appropriate medical expertise and experience (registered medical practitioners)
   - — two members representing the interests of recipient parents and children
   - — two members representing the fields of philosophy, religion, law, social work, and community affairs
   - — a chairperson
   - — the Director-General of Health and the Secretary for Justice.

   The following persons are disqualified as being appointed as chair of the Authority:
   - — any person who is a medical practitioner registered under New Zealand law
   - — any person who is or has been involved in research in keeping or using gametes or embryos
   - — any person who is or has been directly concerned with commissioning or funding any research involving such keeping or use or who has actively participated in any decision to do so.

   (Refer to Schedule 1, Clauses 5, 7, 8, 9, 10, 11, 12, 13, 14 of the HUMAN FERTILISATION AND EMBRYOLOGY ACT 1990 UK).
3. The purpose and activities of the AUTHORITY

   The AUTHORITY may grant licences to any person under whose the activities to be authorised by the licence are to be carried on (Section 16 UK Act)

   Such persons shall hold such medical qualifications and registration as deemed necessary by the AUTHORITY

   (Refer to duties, Section 17 of UK Act)

   NB: The Authority is accountable to the Minister of Health and the Minister of Justice.

   Refer: Schedule: 2, UK Act for scope of licences (amended to include GIFT (gamete interfallopian transfer) and ZIFT (zygote interfallopian transfer) and prohibit implantation of human embryo in non-human animals).

   Ban the use of eggs from human foetuses.

PART III:
Sets out conditions for licences.

A licence cannot authorise

(a) keeping or using an embryo after the appearance of the primitive streak (14 days)
(b) placing an embryo in any animal
(c) keeping or using an embryo in any circumstances in which regulations prohibit its keeping or use, or

(d) replacing a nucleus of a cell of any embryo with a nucleus taken from a cell of any person, embryo or subsequent development of an embryo. (See also gametes UK legislation)
(e) cloning
(f) germ line modification
(g) sex selection
(h) genetic screening.

PART IV:

Records:

One of the requirements of being licensed is that the records be kept (as is consistent with the Adult Adoption Information Act 1985 and subsequent proposed amendments).

Ref. p. 4
NZ Medical Council 1991 Report, para. 2.

Ref. p. 1746
Infertility (Medical Procedures) Act 1984 Victoria, Australia.

PARTS V and VI:
Offences, penalties and regulations to be made under the Act.

Dianne Yates

HUMAN ASSISTED REPRODUCTIVE TECHNOLOGY

ANALYSIS

A BILL INTITULED

An Act to guide the proper use of human assisted reproductive technology in New Zealand

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Human Assisted Reproductive Technology Act **1996.**

(2) This Act shall come into force on the **1st day of January 1997**.

2. Purpose of Act—The purpose of this Act is to—

(a) Regulate the creation, storage, destruction, and use of human embryos by artificial means **(Parts I to III)**; and

(b) Prohibit payment for human parts, human organs or human babies or for surrogacy arrangements and of any use of assisted human reproduction technology to enable a surrogate arrangement **(Part I)**; and

(c) Establish the Human Assisted Reproductive Technology Authority **(Part II)**; and

(d) Establish criteria for the granting of licences by the Authority **(Part III)**; and

(e) Make provision for certain records to be kept of reproductive procedures or surrogacy arrangements in a register administered by the Registrar-General **(Part IV)**; and

(f) Provide for the contravention of the provisions of this Act. **(Part V)**.

3. Principles—The following principles shall guide the operation of this Act:

(a) The paramount importance of the welfare of any child born as a consequence of assisted reproduction procedures:

(b) The right of informed consent to any treatment, especially experimentation and any procedures governed by this Act:

(c) Respect for the dignity of human life:

(d) The right to know one's genetic origins:

(e) The right to individual autonomy:

(f) The principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

4. Meaning of "embryo", "gamete", and associated terms—(1) In this Act, unless the context otherwise requires, "embryo" means a live human embryo where fertilisation is complete and, for this purpose, fertilisation is not complete until the appearance of a two cell zygote.

(2) This Act, so far as it governs bringing about the creation of an embryo, applies only to bringing about the creation of an embryo outside the human body; and in this Act—

(a) References to embryos the creation of which was brought about *in vitro* (in their application to those where fertilisation is complete) are to those where

fertilisation began outside the human body whether or not it was completed there; and

(b) References to embryos taken from a woman do not include embryos whose creation was brought about *in vitro*.

(3) This Act, so far as it governs the keeping or use of an embryo, applies only to keeping or using an embryo outside the human body.

(4) References in this Act to gametes, eggs or sperm, except where otherwise stated, are to live human gametes, eggs or sperm; but references hereinafter to gametes or eggs do not include eggs in the process of fertilisation.

Cf. Human Fertilisation and Embryology Act 1990 (U.K.), s. 1

5. Interpretation—(1) In this Act,—

"Adoptive parent" has the same meaning as in section 2 of the Adoption Act 1955:

"Amended birth certificate", in relation to a person whose birth came about as a result of approved human assisted reproductive services, means a certified copy of the record relating to the birth of a person based on the record of details of those who donated gametes:

"Authority" means the authority established under **section 11** of this Act:

"Birth mother", in relation to any other person, means the person who is that other person's biological mother:

"Genetic parent" means the individual from whom gametes (sperm or ova) were obtained:

"Human assisted reproductive services" means medical, surgical or obstetric services provided to the public or a section of the public for the purpose of assisting women to carry children; and "human assisted reproductive technology" and "human assisted reproductive treatment" have corresponding meanings:

"Ministers" means the Minister of Justice and the Minister of Health:

"Original birth certificate", in relation to any person, means a certificate under section 38 of the Births and Deaths Registration Act 1951 of the original entry of that person's birth and includes either or both of that person's adoptive parents:

"Registrar-General" means the Registrar-General appointed under the Births and Deaths Registration Act 1951:

"Surrogacy arrangement" means an arrangement, including a contract, under which—

(a) A person agrees—

(i) To become pregnant or to seek to become pregnant; and

(ii) To surrender custody of, or rights in relation to, a child born as a result of the pregnancy; or

(b) A person who is already pregnant agrees to surrender custody of, or rights in relation to, a child born as a result of the pregnancy.

(2) References in this Act to keeping, in relation to embryos or gametes, include keeping while preserved, whether preserved by cryopreservation or in any other way; and embryos or gametes so kept are referred to in this Act as "stored"; and "store" and "storage" are to be interpreted accordingly.

(3) For the purposes of this Act, a woman is not to be treated as carrying a child until the embryo has become implanted.

Cf. Human Fertilisation and Embryology Act 1990 (U.K.), s. 2 (2), (3); Family Relationships Act, 1975 (South Australia), s. 10f

6. Act to bind the Crown—This Act shall bind the Crown.

7. New Zealand Bill of Rights Act and Human Rights Act—Nothing in this Act shall derogate from any of the provisions of the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

PART I

ACTIVITIES GOVERNED BY ACT

8. Creation, storage, and use of human embryos—(1) No person shall—

(a) Create a human embryo; or

(b) Store or use a human embryo,—

except pursuant to a licence granted by the Authority under this Act.

(2) No person shall place, or cause to be placed, in a woman—

(a) A live embryo other than a human embryo; or

(b) Any live gametes other than human gametes; or

(c) Any eggs from any human foetus or any embryo created using eggs from any human foetus.

(3) No person shall store any human gametes, except pursuant to a licence granted by the Authority under this Act.

Cf. Human Fertilisation and Embryology Act 1990 (U.K.), ss. 3 (1), (2), 4 (1)

9. Prohibition of payments in consideration of human parts, surrogacy arrangement, or babies—It shall not be lawful for any person to give or receive, or agree to give or receive, any payment or reward in consideration of the following:

(a) Any human gametes or embryo:

(b) Any surrogacy arrangement and any use of any human assisted reproductive technology to enable a surrogate arrangement:

(c) Any child to be born in consequence of any human assisted reproductive services:

(d) Any human body parts or human organs or human tissue, including replaceable body products such as blood and semen:

(e) Any human baby or an individual:

(f) Any foetus or foetal tissue:

Provided that this section shall not apply to the payment of hospital and medical expenses of any person for any human assisted reproductive services authorised under this Act, if the payment is made direct to the person or body of persons that has been granted a licence under this Act.

Cf. 1955, No. 93, s. 25

10. Restriction on advertisements—It shall not be lawful for any person to publish any advertisement indicating that any person is willing to give or receive, or willing to agree to give or receive, any payment or reward in consideration of anything specified in **section 9** of this Act.

PART II

HUMAN ASSISTED REPRODUCTIVE TECHNOLOGY AUTHORITY

11. Human Assisted Reproductive Technology Authority—(1) There shall be an Authority to be known as the Human Assisted Reproductive Technology Authority.

(2) The Authority shall consist of—

(a) The following members, who shall be appointed by the Governor-General on the recommendation of the

House of Representatives on motion of the Minister of Justice or the Minister of Health:

(i) Two members, being registered medical practitioners, with appropriate medical expertise and experience:

(ii) Two members to ensure an adequate representation of the interests of parents and children born of human assisted reproductive treatments:

(iii) Two members to ensure representation from the fields of philosophy, religion, law, social work, and community affairs:

(iv) One member, who shall be the Chairperson of the Authority:

(b) The Director-General of Health:

(c) The Secretary for Justice.

(3) The following persons shall not be appointed as Chairperson of the Authority under **subsection (2) (a) (iv)** of this section:

(a) Any person who is a medical practitioner registered under New Zealand law:

(b) Any person who is, or has been, involved in any way in storing or using human gametes or embryos:

(c) Any person who is, or has been, directly involved in commissioning, funding or conducting any research into the storage or use of human gametes or embryos or who is, or has been, a party to a decision or agreement to undertake such research.

12. Term of office of members of Authority—(1) Every member appointed under **section 11 (2) (a)** of this Act shall hold office for a term of 2 years.

(2) Unless the office sooner becomes vacant, every person appointed as a member of the Authority under **section 11 (2) (a)** of this Act shall hold office until his or her successor is appointed. Every such person may from time to time be reappointed.

(3) Any member of the Authority may at any time resign his or her office by writing addressed to the Minister of Justice or the Minister of Health.

(4) The powers of the Authority shall not be affected by any vacancy in its membership.

13. Accountability—The Authority shall be accountable to the Ministers for the proper discharge of its functions under this Act.

14. Functions—The functions of the Authority are to—

(a) Grant licences authorising—

(i) The creation of a human embryo:

(ii) The storage or use or destruction of a human embryo:

(iii) The storage or use of human gametes:

(iv) The use of the sperm of any man or the eggs of any woman:

(v) The mixing of human gametes with the gametes of any animal,—

pursuant to the provisions of **Part III** of this Act:

(b) Give directions for any purpose for which directions may be given under this Act or directions varying or revoking such directions:

(c) Maintain a code of practice giving guidance about—

(i) The proper conduct of activities carried on in pursuance of a licence under this Act and the proper discharge of the functions of the person responsible and other persons to whom the licence applies:

(ii) The account to be taken of the welfare of children who may be born as a result of human assisted reproductive treatment, and of other children who may be affected by such births, for those providing that treatment:

(iii) The use of any human assisted reproductive technique:

(iv) Observance of the principles expressed in **section 3** of this Act:

(d) Promote, by education and publicity, an understanding and acceptance of the principles expressed in **section 3** of this Act:

(e) Advise the Ministers on human assisted reproductive technology, the provision of human assisted reproductive services, and the operation of this Act and its principles:

(f) Perform such other functions as may be specified in regulations made under this Act.

Cf. Human Fertilisation and Embryology Act 1990 (U.K.), ss. 23 (1), 25 (1)—(3)

15. Procedure—Subject to the provisions of this Act, the Authority may regulate its procedure in such manner as it thinks fit.

16. Annual report—(1) As soon as practicable after the end of each financial year ending with the 30th day of June, the Authority shall furnish to the Ministers a report on its operations during the year.

(2) The Minister of Justice shall lay a copy of the report before the House of Representatives in accordance with section 44A of the Public Finance Act 1989.

17. Further provisions applying to Authority and members—The provisions set out in the **First Schedule** to this Act shall apply to the Authority and members of the Authority.

PART III

LICENCES

18. Licences—(1) The Authority may grant the following and no other licences:

(a) Licences in accordance with the provisions of **section 20** and **Part I** of the **Second Schedule** to this Act authorising activities in the course of providing treatment services:

(b) Licences in accordance with the provisions of **section 20** and **Part II** of that Schedule authorising the storage of gametes and embryos:

(c) Licences in accordance with the provisions of **section 20** and **Part III** of that Schedule authorising activities for the purposes of a project of research.

(2) The Authority may grant, refuse, vary, revoke, and suspend licences in accordance with criteria specified for the purposes of this Part of this Act by regulations made under **section 29** of this Act.

Cf. Human Fertilisation and Embryology Act 1990 (U.K.), s. 11 (1)

19. Prohibited activities—(1) A licence shall not authorise—

(a) The storage or use of an embryo after the appearance of the primitive streak:

(b) The placing of a human embryo in any animal:

(c) The storage or use of any embryo or gametes in any circumstances prohibited by this Act or any regulations made under **section 29** of this Act:

(d) The placement of sperm and eggs in a woman in any circumstances prohibited by this Act or any regulations made under **section 29** of this Act:

(e) The replacement of a nucleus of a cell of an embryo with a nucleus taken from a cell of any person, embryo or subsequent development of an embryo:

(f) Cloning:

(g) Germ line modification:

(h) Sex selection:

(i) Mandatory genetic screening:

(j) The use of eggs from human foetuses.

(2) For the purposes of **subsection (1) (a)** of this section, the primitive streak is to be taken to have appeared in an embryo not later than the end of the period of 14 days beginning with the day when the gametes are mixed, not counting any time during which the embryo is stored.

Cf. Human Fertilisation and Embryology Act 1990 (U.K.), s. 3 (3), (4)

Licence Conditions

20. General licence conditions—The following shall be conditions of every licence granted under this Act:

(a) That the activities authorised by a licence shall be carried on only one the premises to which the licence relates and under the supervision of the person responsible; and

(b) That any member or employee of the Authority, on production, if so required, of a document identifying the person as such, shall at all reasonable times be permitted to enter those premises and inspect them (which includes inspecting any equipment or records and observing any activity); and

(c) That the provisions of the **Second Schedule** to this Act shall be complied with; and

(d) That proper records shall be maintained in such form as the Authority may specify pursuant to **Part IV** of this Act; and

(e) That no money or other benefit shall be given or received in respect of any supply of gametes or embryos unless authorised by the Authority; and

(f) That, where gametes or embryos are supplied to a person to whom another licence applies, that person shall also be provided with such information as the Authority may specify; and

(g) That the Authority shall be provided in such form and at such intervals as it may specify in directions, with

such copies of or extracts from the records, or such other information, as it may specify.

Cf. Human Fertilisation and Embryology Act 1990 (U.K.), s. 12

21. Further conditions of treatment, storage, and research licences—The conditions set out in the **Third Schedule** to this Act shall apply to treatment, storage, and research licences in addition to the general conditions specified in **section 20** of this Act.

PART IV

RECORDS

22. Licensed persons to keep record—Every person licensed to undertake human assisted reproductive treatment by the Authority under this Act, shall keep the following records in a register approved for that purpose by the Registrar-General:

(a) Particulars as prescribed by Registrar-General of each person who has given gametes for use in an approved human assisted reproductive treatment:

(b) The consents given by persons for approved human assisted reproductive treatment:

(c) Particulars of gametes that are destroyed, including method of destruction:

(d) Particulars of gametes that have been used for approved human assisted reproductive treatment:

(e) Particulars relating to an embryo that has been derived from the fertilisation of an ovum:

(f) Particulars of embryos, derived from the fertilisation of an ovum that have been destroyed, including the method of destruction.

23. Transfer of gametes from one licensed person to another—Where an approved human assisted reproductive treatment is carried out by a person licensed to undertake human assisted reproductive service and the gametes used in the procedure are given to another licensed person,—

(a) The person to which the gametes are taken shall give to the person that receives the gametes a copy of the prescribed particulars relating to the gametes, and the consents relating to those gametes; and

(b) The person that receives the gametes shall enter those prescribed particulars, along with the name of the

person from which the gametes were received, in the register maintained for that purpose.

24. Records to be forwarded to Registrar-General—Where a child is born as a result of a pregnancy occurring through an approved human assisted reproductive treatment, the person licenced by the Authority under of this Act shall forward to the Registrar-General, on a form approved by the Registrar-General for that purpose, particulars of that birth, including the details of each person who gave gametes used in the procedure that resulted in that birth as well as the name of the birth mother.

25. Rights of persons conceived by human assisted reproductive treatment—Every person conceived by human assisted reproductive treatment is entitled to receive—

(a) That person's amended birth certificate; and

(b) Any further information relating to the person's genetic parents held by the Registrar-General.

26. Rights of genetic parent—(1) Subject to **subsection (2)** of this section, every genetic parent of a person conceived by human assisted reproductive treatment is entitled to receive—

(a) The original birth certificate of the person; and

(b) Any further information relating to the person conceived by human assisted reproductive treatment held by the Registrar-General.

(2) Any person who claims to be the genetic parent of an person conceived by human assisted reproductive treatment is not entitled to receive an original birth certificate or any further information relating to the person held by the Registrar-General unless he or she is to be presumed, to the satisfaction of the Registrar-General, to be the parent of the person conceived by human assisted reproductive treatment.

Cf. Adoption Information Act 1990, s. 8 (1) (20 (NSW)

27. Rights of adoptive parent—Every adoptive parent of a person conceived by human assisted reproductive treatment is entitled to receive—

(a) The amended birth certificate of the person conceived by human assisted reproductive treatment; and

(b) Any further information relating to that person held by the Registrar-General.

PART V

OFFENCES

28. Offences—(1) Every person who—

(a) Contravenes **section 8 (2) or (3), section 9 or section 10** of this Act; or

(b) Does anything which, by virtue of **section 19** of this Act, cannot be authorised by a licence—

commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or a fine not exceeding $100,000 or both.

(2) Every person who—

(a) Contravenes **section 8 (1)** of this Act otherwise than by doing something which, by virtue of **section 19** of this Act, cannot be authorised by a licence; or

(b) Stores any human gametes in contravention of **section 8 (3)** of this Act; or

(c) Fails to comply with any directions given by the Authority under **section 14 (b)** of this Act; or

(d) Provides—

(i) Any information for the purposes of the grant of a licence, being information which is false or misleading in a material particular; and

(ii) Either knows the information to be false or misleading in a material particular or provides the information recklessly—

commits an offence and is liable—

(e) On conviction on indictment to imprisonment for a term not exceeding 2 years or a fine not exceeding $10,000 or both; and

(f) On summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding $2,500 or both.

(3) Every person who contravenes **sections 22 to 24** of this Act commits an offence and is liable on summary conviction to imprisonment for a term of 3 months or a fine not exceeding $1000 or both.

Cf. Human Fertilisation and Embryology Act 1990 (U.K.), s. 41 (1)-(4)

PART VI

REGULATIONS

29. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) Specifying additional functions to be performed by the Authority to enable it to achieve the objects of the principles expressed in **section 3** of this Act:

(b) Specifying criteria for the granting, refusal, variation, revocation, and suspension of licences granted by the Authority under **Part III** of this Act:

(c) Specifying other practices which may be authorised in licences for providing treatment services:

(d) Subject to **clause 3 (3)** of the **Second Schedule** to this Act, specifying other purposes of any activity which may be authorised in licences for research:

(e) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

SCHEDULES

Section 17

FIRST SCHEDULE

PROVISIONS RELATING TO HUMAN ASSISTED REPRODUCTIVE TECHNOLOGY AUTHORITY AND MEMBERS OF AUTHORITY

1. Remuneration of members of Authority—(1) There shall be paid to the members of the Authority such remuneration by way of fees, salary, wages, or allowances as may from time to time be determined, either generally or in respect of any particular member or members of the Authority, by the Higher Salaries Commission.

(2) Any determination under **subclause (1)** of this clause shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein. If no such date is specified, the determination shall take effect on the date thereof.

2. Travelling allowances and expenses—(1) The Authority is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There shall be paid to the members of the Authority travelling allowances and travelling expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

3. Staff—(1) Subject to the provisions of this clause, the Chairperson of the Authority may appoint such officers and employees (including acting or temporary or casual officers and employees) as may be necessary for carrying this Act into effect.

(2) Officers and employees appointed under this clause shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Chairperson from time to time determines in agreement with the State Services Commissioner, or as the Minister of Justice from time to time determines in any case where the Chairperson and the State Services Commissioner fail to agree.

4. Superannuation or retiring allowances—(1) For the purposes of providing superannuation or retiring allowances for any of the officers or employees of the Authority, the Chairperson may, out of the funds of the Authority, make payment to or subsidise any superannuation scheme that is registered under the Superannuation Schemes Act 1989.

(2) Notwithstanding anything in this Act, any person who, immediately before becoming an officer or employee of the Authority, is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to hold office as an officer or employee of the Authority; and that Act shall apply to that person in all respects as if such an officer or employee were in Government service.

(3) Subject to the Government Superannuation Fund Act 1956, nothing in **subclause (2)** of this clause entitles any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(4) For the purpose of applying the Government Superannuation Fund Act 1956, in accordance with **subclause (2)** of this clause, to a person who is in the service of the Authority as an officer or employee and (in any such case)

FIRST SCHEDULE—*continued*

PROVISIONS RELATING TO HUMAN ASSISTED REPRODUCTIVE TECHNOLOGY AUTHORITY AND MEMBERS OF AUTHORITY—*continued*

is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to any such person, means the Chairperson.

5. Application of certain Acts to Authority and staff—No person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person's appointment as a member of the Authority or a person appointed under clause 3 of this Schedule.

6. Services for Authority—(1) The Crown, acting through any Department, may from time to time, at the request of the Authority, execute any work or enter into any arrangements for the execution or provision by the Department for the Authority of any work or service, or for the supply to the Authority of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

(2) To assist the Authority in carrying this Act into effect, the Chairperson may on behalf of the Authority engage such contractors or consultants as he or she thinks fit.

7. Funds of Authority—The funds of the Authority shall consist of—

(a) Any money appropriated by Parliament for the purposes of the Authority and paid to the Authority for the purposes of the Authority:

(b) All other money lawfully received by the Authority for the purposes of the Authority:

(c) All accumulations of income derived from any such money.

8. Bank accounts—(1) The Authority shall open at any bank or banks such accounts as are necessary for the exercise of the Authority functions and powers.

(2) All money received by the Authority, or by any officer or employee of the Authority shall, as soon as practicable after it has been received, be paid into such bank accounts of the Authority as the Authority from time to time determines.

(3) The withdrawal or payment of money from any such account shall be authorised in such manner as the Authority thinks fit.

9. Investment of money—Any money that belongs to the Authority and that is not immediately required for expenditure by the Authority may be invested pursuant to section 25 of the Public Finance Act 1989.

10. Authority not to borrow without consent of Minister of Finance—The Authority shall not borrow or contract to borrow any money, or renew any loan made to the Authority, without the prior written consent of the Minister of Finance.

11. Seal—The Authority's seal of office shall be judicially noticed in all Courts and for all purposes.

FIRST SCHEDULE—*continued*

PROVISIONS RELATING TO HUMAN ASSISTED REPRODUCTIVE TECHNOLOGY AUTHORITY AND MEMBERS OF AUTHORITY—*continued*

12. Exemption from income tax—The income of the Authority shall be exempt from income tax.

13. Crown entity—(1) The Authority shall be a Crown entity for the purposes of the Public Finance Act 1989.

(2) The annual financial statements of the Authority shall be audited by the Audit Office which, for that purposes, shall have and may exercise all such powers as it has under the Public Finance Act 1977 in respect of public money and public stores.

Section 18 SECOND SCHEDULE

ACTIVITIES FOR WHICH LICENCES MAY BE GRANTED BY AUTHORITY

Part I

Licences for Treatment

1.—(1) A licence under this clause may authorise any of the following in the course of providing treatment services:

(a) Bringing about the creation of embryos *in vitro*:

(b) Keeping embryos:

(c) Using gametes:

(d) Practices designed to secure that embryos are in a suitable condition to be placed in a woman or to determine whether embryos are suitable for that purpose:

(e) Placing any embryo in a woman:

(f) Mixing sperm with the egg of an animal specified in directions, for the purpose of testing the fertility or normality of the sperm, but only where anything which forms is destroyed when the test is complete and, in any event, not later than the two cell stage:

(g) Gamete interfallopian transfers:

(h) Zygote interfallopian transfers:

(i) Such other practices as may be specified in, or determined in accordance with, regulations made under this Act.

(2) Subject to the provisions of this Act, a licence under this clause may be granted subject to such conditions as may be specified in the licence and may authorise the performance of any of the activities referred to in **subclause (1)** above in such manner as may be so specified.

(3) A licence under this clause cannot authorise any activity unless it appears to the Authority to be necessary or desirable for the purpose of providing treatment services.

(4) A licence under this clause cannot authorise altering the genetic structure of any cell while it forms part of an embryo.

(5) A licence under this clause shall be granted for such period not exceeding **5 years** as may be specified in the licence.

Part II

Licences for Storage

2.—(1) A licence under this clause or **clause 1** or **clause 3** of this Schedule may authorise the storage of gametes or embryos or both.

SECOND SCHEDULE—*continued*

ACTIVITIES FOR WHICH LICENCES MAY BE GRANTED BY AUTHORITY—*continued*

(2) Subject to the provisions of this Act, a licence authorising such storage may be granted subject to such conditions as may be specified in the licence and may authorise storage in such manner as may be so specified.

(3) A licence under this clause shall be granted for such period not exceeding **5 years** as may be specified in the licence.

Part III

Licences for Research

3.—(1) A licence under this clause may authorise any of the following:

(a) Bringing about the creation of embryos *in vitro*; and

(b) Keeping or using embryos,—

for the purposes of a project of research specified in the licence.

(2) A licence under this clause cannot authorise any activity unless it appears to the Authority to be necessary or desirable for the purpose of—

(a) Promoting advances in the treatment of infertility; or

(b) Increasing knowledge about the causes of congenital disease; or

(c) Increasing knowledge about the causes of miscarriages; or

(d) Developing more effective techniques of contraception; or

(e) Developing methods for detecting the presence of gene or chromosome abnormalities in embryos before implantation,—

or for such other purposes as may be specified in regulations.

(3) Purposes may only be so specified with a view to the authorisation of projects of research which increase knowledge about the creation and development of embryos, or about disease, or enable such knowledge to be applied.

(4) A licence under this clause cannot authorise altering the genetic structure of any cell while it forms part of an embryo, except in such circumstances (if any) as may be specified in or determined in pursuance of regulations.

(5) A licence under this clause may authorise mixing sperm with the egg of any animal specified in directions, for the purpose of developing more effective techniques for determining the fertility or normality of sperm, but only where anything which forms is destroyed when the research in complete and, in any event, not later than the two cell stage.

(6) No licence under this clause shall be granted unless the Authority is satisfied that any proposed use of embryos is necessary for the purposes of the research.

(7) Subject to the provisions of this Act, a licence under this clause may be granted subject to such conditions as may be specified in the licence.

(8) A licence under this clause may authorise the performance of any of the activities referred to in **subclause (1)** or **subclause (5)** above in such manner as may be so specified.

(9) A licence under this clause shall be granted for such period not exceeding **3 years** as may be specified in the licence.

Cf. Human Fertilisation and Embryology Act 1990 (UK), Schedule 2.

Section 21 THIRD SCHEDULE

FURTHER CONDITIONS OF TREATMENT, STORAGE, AND RESEARCH LICENCES

Treatment Licence Conditions

1. The following shall be the conditions of every licence for treatment under **Part I** of the **Second Schedule** to this Act:

(a) No information shall be removed from any records maintained pursuant to the licence before the expiry of such period as may be specified by the Authority for records of the class in question:

(b) A woman shall not be provided with any treatment services involving—

(i) The use of any gametes of any person, if that person's consent is required under this Act for the use in question; or

(ii) The use of any embryo the creation of which was brought about *in vitro*; or

(iii) The use of any embryo taken from a woman, if the consent of the woman from whom it was taken is required under the **Schedule** to this Act for the use in question,—

unless the woman being treated and, where she is being treated together with a man, the man have been given a suitable opportunity to receive proper counselling about the implications of taking the proposed steps, and have been provided with such relevant information as is proper:

(c) Suitable procedures shall be maintained—

(i) For determining the persons providing gametes or from whom embryos are taken for use in pursuance of the licence, and

(ii) For the purpose of securing that consideration is given to the use of practices not requiring the authority of a licence as well as those requiring such authority.

Cf. Human Fertilisation and Embryology Act 1990 (U.K.), s. 13

Storage Licence Conditions

2. (1) The following shall be conditions of every licence authorising the storage of gametes or embryos under the **Second Schedule** to this Act:

(a) That gametes of a person or an embryo taken from a woman shall be placed in storage only if received from that person or woman or acquired from a person to whom a licence applies and that an embryo the creation of which has been brought about *in vitro* otherwise than in pursuance of that licence shall be placed in storage only if acquired from a person to whom a licence applies; and

(b) That gametes or embryos which are or have been stored shall not be supplied to a person otherwise than in the course of providing treatment services unless that person is a person to whom a licence applies; and

(c) That no gametes or embryos shall be kept in storage for longer than the statutory storage period and, if stored at the end of the period, shall be destroyed or allowed to perish; and

(d) That such information as the Authority may specify to the persons whose consent is required under this Act, the terms of their consent and the circumstances of the storage and as to such other matters as the Authority may specify in directions shall be included in the records maintained in pursuance of the licence; and

THIRD SCHEDULE—*continued*

FURTHER CONDITIONS OF TREATMENT, STORAGE, AND RESEARCH LICENCES—*continued*

(e) No information shall be removed from any records maintained in pursuant to a licence before the expiry of such period as may be specified by the Authority for records of the class in question.

(2) The storage period in respect of gametes is such period not exceeding **2 years** as the licence may specify; and

(3) The storage period in respect of embryos is such period not exceeding **5 years** as the licence may specify.

Cf. Human Fertilisation and Embryology Act 1990 (U.K.), s. 14

Research Licence Conditions

3. The following shall be conditions of every licence for research under **Part III** of the **Second Schedule** to this Act:

(a) The records maintained in pursuant to the licence shall include such information about such matters as the Authority may specify:

(b) No information shall be removed from any records maintained pursuant to the licence before the expiry of such period as may be specified by the Authority for records of the class in question:

(c) No embryo appropriated for the purposes of any project of research shall be kept or used otherwise than for the purposes of such a project.

Cf. Human Fertilisation and Embryology Act 1990 (U.K.), s. 15

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