Overview of English law on assisted reproduction

**Human Fertilisation and Embryology Act 2008**
http://www.opsi.gov.uk/acts/acts2008/ukpga_20080022_en_1

This Act includes amendments to the Human Fertilisation and Embryology Act 1990 which is the main legislation governing assisted reproduction.
http://www.opsi.gov.uk/Acts/acts1990/ukpga_19900037_en_1

It also includes amendments to the Surrogacy Arrangements Act 1985

**Key sections of the amended 1990 Act and the 2008 Act**

- Sections 3 and 4 of the Act specify that it is unlawful to store or use embryos or gametes except with a license granted by the HFEA.

- The requirement for appropriate counselling
  
  Section 13(6) specifies that A woman shall not be provided with treatment services specified under the Act ‘unless she and any man or woman who is to be treated together with her have been given a suitable opportunity to receive proper counselling about the implications of her being provided with treatment services of that kind, and have been provided with such relevant information as is proper.’

  This section also specifies that when treatment services include the use of gametes or an embryo from a person that is not one of the couple being treated that counselling must include

  ‘(a) the importance of informing any resulting child at an early age that the child results from the gametes of a person who is not a parent of the child, and

  (b) suitable methods of informing such a child of that fact.’ (s13.6.c)

- Welfare of the child to be born
  
  Section 13(5) of the 1990 Act specified that providing IVF services must take into consideration the welfare of any child that might be born as a result of the treatment. This did include the need for the child for a father. This section has been amended by the 200 Act to read ‘A woman shall not be provided with treatment services unless account has been taken of the welfare of any child who may be born as a result of the treatment (including the need of that child for supportive parenting), and of any other child who may be affected by the birth’. This places an obligation on the clinicians providing IVF services to carefully consider the circumstances that will affect any child born as a result of their treatment. The HFEA provides some guidance on when such consideration may result in refusal of treatment, for example if there is a significant risk of serious harm to any child born as a result of the treatment.

- Meaning of the terms Mother and Father
Sections 27 and 28 specify who is legally recognised as the mother and father of a child created by IVF.

- Section 27 (1) *The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child.*

- Section 28 specifies that the man being treated with the woman is seen as the father of the child resulting from the treatment. If the sperm creating the embryo was not that of the man being treated with her he will still be regarded as the father unless it can be shown that he did not consent to the placing of the embryo. It also specifies that a man (other than the man being treated with the woman) who has donated sperm is **not** seen as the father of the child born as a result of the treatment. A man whose sperm, or embryos created from his sperm, were used after his death may be considered the father of any child born as a result only if he consented in writing to this specific use and did not withdraw his consent.

- Sections 42 and 43 of the 2008 Act allow for a woman who is either in a civil partnership with the woman who receives IVF treatment or a woman who has consented to be a parent of the child born as a result of IVF to be the ‘other parent’ of the child. Subsequent sections provide the equivalent conditions in relation to consent and use of embryos after the ‘other parent’ has died as apply to a man who is the father as specified in the Act.

**Embryo selection**

Since 1990 when the Act first came into force the science of pre implantation genetic diagnosis has developed and it is now possible to identify embryos with specific genetic markers, or HLA tissue type and hence select specific embryos for implantation. This has had several consequences

1. When either the woman or her partner has a family history of a genetically transmissible disease they can select embryos that do not carry the harmful gene (e.g. cystic fibrosis or Duchenne muscular dystrophy).
2. When an existing child of a couple has a serious disease that could be treated by transplantation of tissue compatible bone marrow or cord blood it is possible to select a tissue compatible embryo for implantation (creation of ‘saviour siblings’)
3. It is possible to select embryos that have a particular gene, for example there has been recent debate about whether a deaf couple could select an embryo that carried one of the genes for deafness so that their child would also be deaf.
4. It is possible to select embryos of a particular sex.

The 2008 Act addresses these issues with specific amendments to the 1990 Act.

- Section 13 of the 1990 Act now has subsections 9 and 10 which prohibit the use of gametes or embryos that carry a gene, chromosome or mitochondrial abnormality (or are of a particular sex associated with such an abnormality) involving a significant risk that a person having that abnormality would have or develop
  - a serious physical or mental disability,
• a serious illness, or
• any other serious medical condition
for the purposes of IVF in preference to gametes or embryos that do not carry the risk of such an abnormality.

• Schedule 3 of the 1990 Act now addresses embryo testing. This is permitted for the purposes of:
  o Establishing whether the embryo has an abnormality that will reduce the risk of a live birth.
  o Where there is a risk that the embryo will have an abnormality that will result in a serious disability or illness.
  o Where there is a risk of gender related abnormalities that will result in a serious disability or illness sex selection is permitted.
  o In order to determine whether an embryo is tissue compatible with a sibling who has a serious medical condition which could be treated with umbilical cord blood, bone marrow or other tissue of any resulting child.
Note paragraph 4 of the Schedule specifically excludes whole organs under the definition of tissue for this purpose.

• Schedule 2 of the 1990 Act also prohibits sex selection of embryos or the processing of sperm for the purposes of sex selection.

**Surrogacy arrangements**

• Commercial surrogacy is unlawful (section 2). Negotiations regarding surrogacy can be carried out by a person who is considering becoming a surrogate mother, a person who is seeking a surrogate mother or a non profit making organisation that negotiates on their behalf

• Advertising by or on behalf of either a potential surrogate mother or a person looking for a surrogate mother is an offence. (section 3)

Parental responsibility for a child born as a result of surrogacy
• Woman who has the embryo placed in her uterus is the mother of the child (s 27 of HFE Act)
• If the surrogate is married then her husband is the father unless he did not consent to the placing of the embryo. If he did not consent then no-one is recognised as the father (s28 HFE Act)
• Following the birth of a child from a surrogate pregnancy an application for a parental order can be made by a couple where the gametes of at least one of the applicants was used to bring about the creation of the embryo. The application must be made within 6 months of the birth of the child and the child must be living with the applicants. (s54 HFE Act 2008)