

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,977, 13 ta' April, 2018

Taqsimha C

Nru. 37

13. 04. 2018

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Chris Fearn, M.P., Deputat Prim Ministru u Ministru għas-Saħħa, u moqri għall-Ewwel darba fis-Seduta tal-11 ta' April, 2018.

A BILL introduced by the Honourable Chris Fearn, M.P., Deputy Prime Minister and Minister for Health, and read the First time at the Sitting of the 11th April, 2018.

ATT li jemenda l-Att dwar il-Protezzjoni tal-Embrijuni, Kap. 524.

AN ACT to amend the Embryo Protection Act, Cap, 524.

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA
Clerk of the House of Representatives

ABBOZZ TA' LIĠI imsejjah

Att li jemenda l-Att dwar il-Protezzjoni tal-Embrijuni, Kap.524

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, harġet b'liġi dan li ġej:-

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2018 li jemenda l-Att dwar il-Protezzjoni tal-Embrijuni, u dan l-Att għandu jinqara u jinftiehem ħaga waħda mal-Att dwar il-Protezzjoni tal-Embrijuni, hawnhekk iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor u bidu fis-seħħ.
Kap. 524.

(2) Dan l-Att għandu jidhol fis-seħħ f'dik id-data li l-Ministru responsabbli għas-Saħħa jista' b'avviż jistabbilixxi fil-Gazzetta, u jistgħu jiġu stabbiliti dati differenti għal dispożizzjonijiet u għanijiet differenti ta' dan l-Att.

2. L-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 2 tal-Att prinċipali.

(a) minnufih wara t-tifsira "Direttiva", għandhom jidhlu t-tifsiriet godda li ġejjin:

" "donatur" tfisser terza persuna li b'donazzjoni tagħti ċelloli *germ line* biex tintuża għal prokreazzjoni assistita b'mod mediku:

Iżda donazzjonijiet minn axxendenti għal dixxendenti; dixxendenti għal axxendenti; aħwa sew jekk aħwa mill-istess ġenituri, kemm jekk minn ġenitur wiehed biss; persuni relatati mid-demmi f'kull grad tal-linja dritta m'għandhomx ikunu permissibbli.";

"donazzjoni ta' embrijun" tirreferi għall-proċess stabbilit f'dan l-Att fejn embrijuni mhux użati huma mogħtija b'donazzjoni

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lill-ġenitur prospettiv:

Kap. 16.

Iżda din it-tifsira m'għandhiex ikollha l-istess tifsira u l-istess effett tat-tifsira "adozzjoni" taht il-Kodiċi Ċivili;

(b) minflok it-tifsira "ġenitur prospettiv" tagħha, għandha tidhol it-tifsira ġdida li ġejja:

" "ġenitur prospettiv" tfisser kull persuna, irrispettivament mill-ġeneru jew mill-orjentazzjoni sesswali, li laħqet l-età maġġuri u hija riċettur jew utent ta' tekniki ta' prokreazzjoni assistita b'mod mediku skont dan l-Att;" u

(ċ) minnufih wara t-tifsira "prokreazzjoni assistita b'mod mediku" għandha tidhol it-tifsira ġdida li ġejja:

" "Protokoll" tfisser il-protokoll stabbilit mill-Awtorità skont dan l-Att."

Emenda tal-artikolu 4 tal-Att prinċipali.

3. (1) L-artikolu 4 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu:

(i) fil-paragrafu (a) minflok il-kliem "prokreazzjoni assistita b'mod mediku;" għandhom jidhlu l-kliem "prokreazzjoni assistita b'mod mediku u donazzjoni ta' gameti";

(ii) fil-paragrafu (ċ), minflok il-kliem "l-artikolu 18" għandhom jidhlu l-kliem "dan l-Att";

(iii) il-paragrafu (f) għandu jiġi enumerat mill-ġdid bħala l-paragrafu (h) u minnufih wara l-paragrafu (e) tiegħu għandhom jiżdiedu l-paragrafi ġodda li ġejjin:

"(f) li tiddetermina l-eligibilità u l-adegwatezza jew mod ieħor ta' ġenitur prospettiv addottiv skont il-Protokoll fil-każijiet fejn tista' tagħti għal addozzjoni ċelloli tal-bajd fertilizzati skont dan l-Att u żżomm registru tagħhom;

(g) li żżomm registru ta' kull prokreazzjoni assistita b'mod mediku, donazzjoni ta' ċelloli *germ line*, krijo-preservazzjoni ta' ċelloli *germ line*, krijo-preservazzjoni ta' bajd fertilizzat u addozzjoni ta' embrijuni skont dan l-Att li għandu jinżamm kunfidenzjali;"

(b) is-subartikolu (2) għandu jiġi sostitwit b'dan li ġej:

"(2) Minkejja d-dispożizzjonijiet ta' kwalunkwe liġi oħra u

minkejja d-dispożizzjonijiet tal-artikolu 7 iżda mingħajr ħsara għad-dispożizzjonijiet tal-artikolu 18, l-Awtorità tista' tagħti għal adozzjoni il-bajd fertilizzati lill-terza persuna li tikkwalifika għal prokreazzjoni assistita b'mod mediku, fil-każijiet fejn:

(a) wara l-fertilizzazzjoni taċ-ċelloli tal-bajd imma qabel isir l-impjantazzjoni taċ-ċelloli tal-bajd fertilizzati fil-guf il-mara tmut; jew

(b) għal kwalunkwe raġuni oħra l-impjantazzjoni taċ-ċelloli tal-bajd fertilizzati fil-guf tal-ġenitur prospettiv ma jistax isir inklużi dawk il-każijiet fejn il-ġenitur prospettiv jirrifjuta l-impjantazzjoni msemmija jew lahaq l-età massima permessa għall-impjantazzjoni tiegħu jew ma jgēddid il-kuntratt mal-persuna bil-liċenzja fejn l-embrijuni krijo-preservati qed ikunu miżmuma għal użu li jista' jkun hemm:

Iżda l-Awtorità ma tistax tagħti għal adozzjoni ċ-ċelloli tal-bajd fertilizzati qabel il-ġenitur prospettiv jilhaq l-età massima permessa għall-impjantazzjoni tiegħu.";

(ċ) is-subartikolu (3) tiegħu għandu jigi enumerat mill-ġdid bħala s-subartikolu (4) u minnufih wara s-subartikolu (2) tiegħu, għandu jiżdid is-subartikolu ġdid li ġej:

"(3) L-adozzjoni ta' embrijun tista' sseħħ biss wara deċiżjoni bil-miktub tal-Awtorità wara applikazzjoni tal-ġenitur jew ġenituri prospettivi u wara t-teħid ta' deċiżjoni fuq l-eligibilità u l-kompetenza jew mod ieħor tal-applikant jew applikanti skont il-Protokoll:

Iżda l-Awtorità għandha tagħmel kull sforz raġonevoli sabiex tqabbel ġenituri prospettivi mal-embrijuni li għandhom bżonn tqegħid ta' adozzjoni:

Iżda wkoll, l-identità tal-adottant jew adottanti u l-persuni li minnhom ġew iċ-ċelloli *germ line* għandhom f'kull każ jibqgħu anonimi u l-ġenituri prospettivi għandhom ikollhom biss il-jedd għal informazzjoni ġenerika skont il-Protokoll:

Iżda wkoll l-impjantazzjoni ta' embrijuni fl-istess ħin li joriġinaw minn persuni differenti f'ġenitur prospettiv waqt l-istess ċiklu huwa projbit.";

(d) fl-ewwel *proviso* tas-subartikolu (4) tiegħu, kif enumerat mill-ġdid:

(i) minnufih wara l-kelma "Izda" għandhom jiżdienu l-kliem "f'każ eċċezzjonali meta l-embrijun ma jkunx ġie adottat mill-ġenitur prospettiv jew mill-ġenituri prospettivi";

(ii) minflok il-kelma "impjantazzjoni" għandhom jidhlu l-kliem " impjantazzjoni fil-ġenitur prospettiv"; u

(iii) minflok it-tieni *proviso* għandu jidhol dan li ġej:

"Izda, kwalunkwe persuna li għandha interess ġuridiku, jew fl-assenza tagħha, l-eredi legali tagħha, f'għoxrin jum mid-data li l-Awtorità tiegħu d-deċiżjoni għall-għotja b'donazzjoni taċ-ċelloli tal-bajd fertilizzati, tista' b'rikors ġuramentat fil-Qorti Ċivili (Sezzjoni tal-Familja) tistharreg il-validità tad-deċiżjoni u għandu jkun hemm il-jedd ta' appell mid-deċiżjoni tal-Qorti Ċivili (Sezzjoni tal-Familja) quddiem il-Qorti tal-Appell permezz ta' rikors magħmul fi żmien għoxrin jum mid-data tad-deċiżjoni tal-Qorti Ċivili (Sezzjoni tal-Familja). Fejn ma jkunx hemm rikors skont kif provdut f'dan l-artikolu, jew fejn il-proċeduri ġudizzjarji huma rtirati jew ma jitkomplewx, jew fejn il-proċeduri ġudizzjarji ikunu saru *res judicata*, id-deċiżjoni tal-Awtorità jew tal-Qorti jkunu finali:

Izda wkoll l-embrijun għandu jibqa' krijo-preservat sakemm id-deċiżjoni tal-Awtorità jew tal-Qorti tkun finali."; u

(iv) minnufih wara s-subartikolu (4) kif enumerat mill-ġdid għandhom jidhlu s-subartikolu godda li ġejjin:

"(5) Fejn d-deċiżjoni li tal-Awtorità jew tal-qorti għal għotja tal-embrijun għall-adozzjoni tkun finali, dan l-embrijun għandu jkun ikkunsidrat bħala embrijun tal-addottant jew addontanti u l-persuni li minnhom oriġina l-embrijun għandhom jitilfu kull dritt u għandhom ikunu meħlusa minn kull obligazzjoni lejn l-embrijun.

(6) Bla ħsara għal kif hemm iprovdut mod ieħor f'dan l-artikolu, malli d-deċiżjoni tal-Awtorità għall-għotja ta' embrijun tkun finali, din tkun irrevokabli.".

Emenda tal-artikolu 6 tal-Att prinċipali.

4. L-artikolu 6 tal-Att prinċipali għandu jkun emendat kif ġej:

(a) fil-paragrafu (a) tiegħu, minflok il-kliem "tal-mara minn fejn oriġinat iċ-ċellola;" għandhom jidhlu l-kliem "tal-ġenituri prospettivi";

(b) il-paragrafu (b) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(b) intenzjonalment jiffertilizza iktar minn tlett ċelloli tal-

bajd minn mara waħda fl-ewwel ċiklu ta' trattament jew iktar minn ħames ċelloli tal-bajd f'kull ċiklu ma' kull ċiklu sussegwenti:

Izda meta l-persuna tkun tabib, l-ebda passi kriminali ma jistgħu jittieħdu kontra dak it-tabib jekk it-tabib ikun qiegħed jaġixxi b'mod strett fedelment u *bona fide* skont il-Protokoll imsemmi f'dan l-Att:

Izda wkoll fejn il-ġenitur prospettiv jew il-ġenituri prospettivi waqt li jkunu qed jgħaddu minn prokreazzjoni assistit b'mod mediku ma jagħtux espressament il-kunsens tagħhom għall-krijo-preservazzjoni tal-embrijuni u għad-donazzjoni tal-bajd fertilizzati jekk neċessarju, skont l-artikolu 18, m'huwiex legali li tiffertilizza iżjed minn massimu ta' żewġ (2) bajd f'kull ċiklu ta' trattament.";

(ċ) il-paragrafu (ċ) tiegħu għandu jiġi sostitwit b' dan li ġej:

"(ċ) jittrasferixxi iktar minn żewġ bajd fertilizzati fil-ġenitur prospettiv f'ċiklu ta' trattament";

(d) il-paragrafu (f) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(f) iwettaq fertilizzazzjoni b'mod artifiċjali, jew jittrasferixxi embrijun uman f'mara li tkun ippreparata li tagħti tarbija, għall-gwadan kummerċjali, b'mod permanenti wara t-twelid,";

(e) il-paragrafu (i) tal-proviso tiegħu għandu jiġi sostitwit b'dan li ġej:

"(i) il-ġenitur prospettiv fir-rigward tal-aġir imsemmi fil-paragrafi (a) u (d); u, jew"; u

(f) fil-paragrafu (ii) tal-proviso tiegħu:

(i) minflok il-kliem "żewġ gradi." għandhom jidhlu l-kliem "żewġ gradi:" u

(ii) minnufih wara l-proviso għandu jidhol il-proviso ġdid li ġej:

"Izda wkoll il-Ministru permezz ta' regolamenti għandu jistabbilixxi l-mod kif surrogazzjoni altruwista għandha ssir u għal kwalunkwe materji oħra li jkunu incidentali u anċillari għaliha.".

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Sostituzzjoni tal-artikolu 7 tal-Att prinċipali.

5. L-artikolu 7 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"Krijo-preservazzjoni ta' ċellooli *germi line* u bajd fertilizzati.

7. (1) Ċellola tal-isperma jistgħu jkunu krijo-preservati ġewwa banek awtorizzati matul il-ħajja tal-persuna li minnha joriġinaw.

(2) *Oocytes* jistgħu jkunu krijo-preservati f'banek awtorizzati sal-età massima għal fertilizzazzjoni u t-trasferiment tagħhom fil-ġenitur prospettiv sakemm ma jkunu mogħtija b'donazzjoni skont dan l-Att:

Iżda, f'kwalunkwe każ, ma jistgħux jiġu krijo-preservati *oocytes* wara l-mewt tal-persuna li minnha joriġinaw.

(3) Bajd fertilizzati li ma jistax jiġi trasferit fil-ġenitur prospettiv f'ċiklu ta' trattament għandu jkun krijo-preservat f'banek liċenzjati għall-użu fil-futur mill-ġenitur prospettiv:

Iżda l-krijo-preservazzjoni ta' bajd fertilizzati għandu jkun regolat bi ftehim bejn il-ġenitur prospettiv jew il-ġenituri prospettivi u l-persuna bil-liċenzja bla ħsara għal awtorizzazzjoni mogħtija minn qabel mill-Awtorità u għandu jkollu terminu ta' validità sa massimu ta' hames snin li jista' jiġġedded sal-età massima permissibbli għat-trasferiment tiegħu f'ġenitur prospettiv, skont il-Protokoll.

Iżda wkoll meta l-età massima permissibbli għat-trasferiment tal-embrijun fil-ġenitur prospettiv tintlaħaq, l-Awtorità għandha tawtorizza d-donazzjoni tal-embrijun krijo-preservat.

(4) Bla ħsara għas-subartikoli imsemmija hawn fuq, kull forma oħra ta' preservazzjoni, ta' ċellooli *germi line* u bajd fertilizzati huwa projbit u kull min jikser dan l-artikolu ikun ħati ta' reat u jeħel meta jinstab ħati multa ta' mhux anqas minn hamest elef euro (€5,000) u mhux aktar minn hmitax-il elf euro (€15,000) jew priġunerija ta' mhux aktar minn tlett snin jew dik il-multa u priġunerija flimkien:

Iżda fejn ikun hemm ksur ta' kwalunkwe dispożizzjoni ta' dan l-Att, l-Awtorità tista' tordna l-krijo-preservazzjoni ta' kull bajda fertilizzata."

Emenda tal-artikolu 8 tal-Att prinċipali.

6. L-artikolu 8 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(1) Kull min, barra mill-finijiet ta' impjantazzjoni f'ġenitur prospettiv jew fl-omm surrogata kif hekk awtorizzat mid-dispożizzjonijiet ta' dan l-Att, jiddisponi minn, jgħaddi lil jew jikseb embrijun uman prodott barra mill-ġisem, jew inehhi dak l-embrijun minn ġenitur prospettiv qabel ma titlesta l-impjantazzjoni fil-ġuf, ikun hati ta' reat u jehel, meta jinstab hati, multa ta' mhux anqas minn ħamest elef euro (€5,000) u mhux aktar minn ħmistax-il elf euro (€15,000) jew prigunerija ta' mhux aktar minn tliet snin jew dik il-multa u l-prigunerija flimkien."; u

(b) fis-subartikolu (2) tiegħu, minflok il-kliem "jiġi żviluppat embrijun uman" għandhom jidhlu l-kliem "tiġi żviluppata bajda fertilizzata umana".

7. L-artikolu 9 tal-Att prinċipali għandu jiġi emendat kif ġej:

Sostituzzjoni tal-artikolu 9 tal-Att prinċipali.

"Donazzjoni u użu ta' ċelloli *germ line*.

9. (1) Id-donazzjoni ta' ċelloli *germ line* għall-fini ta' prokreazzjoni assistita b'mod mediku għandha tkun ftehim kunfidenzjali bejn id-donatur u l-persuna bil-liċenzja:

Iżda qabel ma jidhlu għal dan il-ftehim, il-persuna bil-liċenzja għandha tavża lid-donatur bil-konsegwenzi ta' dan il-ftehim skont dan l-Att:

Iżda wkoll m'għandux ikun hemm rabta ta' filjazzjoni bejn l-embrijun fertilizzat permezz ta' ċelloli *germ line* mogħtija b'donazzjoni u d-donatur.

(2) Donatur għandu jkollu età ta' 'l fuq minn tmintax-il (18) sena, il-kapaċità legali biex jintrabat b'kuntratt, ikun ta' saħħa mentali u fiżika tajba u kif ukoll jissodisfa l-kriterji speċifikati fil-Protokoll.

(3) Donatur ta' *oocytes* għandu jkun taħt l-età ta' sitta u tletin (36) sena:

Iżda l-Awtorità tista' tawtorizza donatur li jeċċedi dan il-limitu tal-età f'każijiet eċċezzjonali speċifikati fil-Protokoll.

(4) Hlief f'każijiet ta' donazzjoni diretta, il-ġenituri prospettivi għandhom ikunu intitolati biss sabiex jottjenu dik l-informazzjoni ġenerika li hemm speċifikata fil-Protokoll dwar id-donatur li l-identità tiegħu għandha dejjem tibqa' kunfidenzjali.

Iżda d-dokumenti mediċinali anonimi tad-donatur għandhom ikunu aċċessibli għall-wild konċeput miċ-ċellooli *germ line* tal-imsemmi donatur jew meta l-wild jagħlaq sittax-il (16) sena jew, bil-kunsens tal-Awtorità, f'xi stadju qabel f'ċirkostanzi eċċezzjonali fejn il-ħajja jew is-saħħa tal-wild li twieled minn dawk iċ-ċellooli *germ line* qiegħda fil-periklu.

(5) Id-donazzjoni ta' ċellooli *germ line* għall-fini ta' prokreazzjoni assistita b'mod mediku għandha tkun limitata għal donazzjoni waħda biss u din id-donazzjoni għandha tkun użata f'ġenitur prospettiv wieħed biss.

(6) Għandha tkun ir-responsabbiltà ta' kull persuna bil-liċenzja li tirċievi ċellooli *germ line* mogħtija b'donazzjoni li tivverifika l-eligibilità u l-adegwatezza tad-donatur u tal-ġenitur prospettiv għand min ser jiġu donati iċ-ċellooli *germ line* skont id-dispożizzjonijiet preċedenti, li żżomm reġistru b'notamenti aġġornati, u li tinforma lill-Awtorità mingħajr dewmien bid-dettalji sħaħ ta' kull donazzjoni.

(7) Kull min juża, jittrasferixxi jew jiffertilizza xi ċellooli *germ line* b'kontravvenzjoni ta' dan l-artikolu jkun ħati ta' reat u jeħel, meta jinsab ħati, multa ta' mhux anqas minn għaxart elef euro (€10,000) u mhux aktar minn tlieta u għoxrin elf euro (€23,000) jew priġunerija ta' mhux aktar minn ħames snin jew dik il-multa u l-priġunerija flimkien:

Iżda meta l-persuna li tkun wettqet l-imsemmija proċedura tkun tabib, it-tabib għandu jiġi eżentat mir-responsabbiltà kriminali meta juri li jkun ta' attenzjoni raġonevoli biex jiddetermina li, il-persuna li fuqha twettqet il-proċedura jew kien hemm tentattiv biex titwettaq, kienet intitolata għal aċċess għal proċedura bħal dik."

Emenda tal-artikolu 12 tal-Att prinċipali.

8. L-artikolu 12 tal-Att prinċipali għandu jiġi emendat kif ġej:

(1) fis-subartikolu (1) tiegħu:

(a) fil-paragrafu (b) il-kelma "embrijun" għandha tiġi sostitwita bil-kliem "bajda fertilizzata";

(b) fil-paragrafu (ċ):

(i) minnufih wara l-kliem "tar-raġel", għandhom jiżdiedu l-kliem "qabel jew"; u

(ii) minnufih wara l-kliem "wara mewtu", għandhom jiżdiedu l-kliem ", ħlief fil-każ fejn il-mejjet kien ta l-isperma tiegħu b'donazzjoni";

(ċ) fil-paragrafu (d):

(i) minnufih wara l-kliem "tal-mara", għandhom jiżdiedu l-kliem "qabel jew"; u

(ii) minnufih wara l-kliem "wara mewtha", għandhom jiżdiedu l-kliem ", ħlief fil-każ fejn il-mejta kienet tat iċ-ċellooli tal-bajd tagħha b'donazzjoni"; u

(2) is-subartikolu (2) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(2) Xejn f'dan l-Att m'għandu jiġi interpretat li jimpedixxi għal raġunijiet mediċi u skont normi mediċi aċċettati t-teħid u l-iffriżar tal-isperma jew tal-bajda ta' persuna bl-iskop ta' użu tal-istess sperma jew bajda fi stadju ulterjuri mill-istess persuna li minnha ġiet mehuda jew iffriżata l-isperma jew il-bajda biex jiġi ġġenerat embrijun."

9. L-artikolu 18 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 18 tal-Att prinċipali.

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(1) Il-kunsens tal-ġenitur jew tal-ġenituri prospettivi li jkun ser ikollhom aċċess għal proċeduri ta' prokreezzjoni assistita b'mod mediku għandu jingħata b'mod espress bil-miktub fuq dik il-formula, kif tista' tiġi preskritta b'regolamenti taħt dan l-Att, u għandu jiġi speċifikat ukoll jekk jagħtux kunsens għall-krijo-preservazzjoni ta' iktar embrijuni milli għandu jkun hemm u jekk jagħtux kunsens għad-donazzjoni ta' bajd fertilizzat lill-, u fil-preżenza tat-tabib inkarigat mill-proċedura:

Iżda jekk il-ġenituri prospettivi huma miżżewġin jew f'relazzjoni stabbli, il-kunsens tagħhom għandu jingħata b'mod espress kongunt bil-miktub fuq dik il-formula preskritta:

Iżda wkoll meta l-ġenitur jew il-ġenituri prospettivi jagħtu l-kunsens tagħhom għall-krijo-preservazzjoni ta' iktar embrijuni milli għandu jkun hemm u għad-donazzjoni ta' bajd fertilizzat fejn neċessarju, it-tabib inkarigat mill-proċedura għandu jagħmel impjantazzjoni ta' massimu ta' żewġ bajd fertilizzat:

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Iżda wkoll meta l-ġenitur jew il-ġenituri prospettivi ma jagħtux il-kunsens taġhom għall-krijo-preservazzjoni ta' iktar embrijuni milli għandu jkun hemm u għad-donazzjoni ta' bajd fertilizzat fejn neċessarju, it-tabib inkarigat mill-proċedura għandu jiffertilizza biss massimu ta' żewġ bajd:

Iżda wkoll il-kunsens għal krijo-preservazzjoni jista' jkun irtirat biss bil-miktub mill-ġenitur jew mill-ġenituri prospettivi qabel ma jsir il-proċess ta' fertilizzazzjoni.";

(b) is-subartikolu (2) tiegħu għandu jiġi emendat kif ġej:

(i) il-kliem "liż-żewġ ġenituri prospettivi" għandhom jiġu sostitwiti bil-kliem "lill-ġenitur jew lill-ġenituri prospettivi";

(ii) il-paragrafu (f) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(f) il-kwistjonijiet bioetiċi, inkluż il-proċess tal-iffriżar involut kif imsemmi fl-artikolu 4 u l-artikolu 7;"

(iii) fil-paragrafu (g) tiegħu, il-kliem "proċedura kollha;" għandhom jiġu sostitwiti bil-kliem "proċedura kollha; u";

(iv) minnufih wara l-paragrafu (g) tiegħu, għandu jiżdied il-paragrafu ġdid li ġej:

"(h) iċ-ċirkostanzi li fihom l-Awtorità tista' tagħti għall-adozzjoni ta' ċelloli tal-bajd fertilizzat lil terza persuna skont dan l-Att."; u

(v) fis-subartikolu (4) tiegħu, il-kliem "ġenituri prospettivi" għandhom jiġu sostitwiti bil-kliem "ġenitur jew ġenituri prospettivi".

Sostituzzjoni
tal-artikolu 19
tal-Att
prinċipali.

10. L-artikolu 19 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"L-istatus tat-tfal imwielda.

19. (1) It-tfal li jkunu mwiieldaminn riżultat ta' proċedura ta' prokreazzjoni assistita b'mod mediku, inklużi każijiet fejn it-tfal ikunu mwielda minn ċelloli *germ line* mogħtija b'donazzjoni jew minn bajda fertilizzata mogħtija b'donazzjoni, għandhom jiġu kunsidrati bħala t-tfal tal-ġenitur jew tal-ġenituri prospettivi li kienu taw il-kunsens tagħhom b'mod espress bil-miktub kif provdut fl-artikolu 18 u dawn it-tfal għandhom, għall-għanijiet u l-finijiet tal-liġi, jiġu kkunsidrati li twieldu b'mod naturali mill-istess ġenitur jew ġenituri prospettivi mingħajr l-intervent tal-proċedura kif imsemmija qabel; u bla ħsara għaddispożizzjonijiet ta' xi liġi oħra, dawn it-tfal għandhom jiġu reġistrati f'kull att ta' stat ċivili bħala dixxendenti diretti ta' dawn il-ġenitur jew il-ġenituri prospettivi li għandhom igawdu dawk id-drittijiet u jassumu dawk l-obbligi skont il-liġi fir-rigward ta' dawn it-tfal.

(2) Ma għandu jkun hemm l-ebda rabta ta' filjazzjoni bejn it-tfal mwielda minn ċelloli *germ line* donati jew minn ċelloli ta' bajd fertilizzat addotat, u l-persuni li taw b'donazzjoni l-imsemmija ċelloli *germ line* jew minn min l-imsemmija bajd fertilizzat addotati originaw."

11. L-artikolu 22 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 22 tal-Att prinċipali.

"Liċenzja tal-post. Kap. 483.

22. (1) L-ebda post ma jista' jintuża għal xi attività li jkollha x'taqsam ma' prokreazzjoni assistita b'mod mediku sakemm dak il-post ma jkunx liċenzjat għaldaqstant mill-Awtorità dwar il-Liċenzji skont l-Att dwar id-Demm Uman u Trapjanti u kull regolamenti magħmula tahtu.

(2) Għandu jkun id-dmir ta' kull persuna bil-liċenzja li żżomm reġistru kunfidenzjali bid-dettalji kollha ta' kull prokreazzjoni assistita b'mod mediku, donazzjoni ta' ċelloli *germ line*, krijo-preservazzjoni ta' ċelloli *germ line*, krijo-preservazzjoni ta' bajd fertilizzat skont dan l-Att u li tgħaddi l-informazzjoni lill-Awtorità mingħajr dewmien."

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Emenda
konsegwenzjali
għall-artikolu
115 tal-Kodiċi
Ċivili.
Kap. 16.

12. Fil-paragrafu (a) tas-subartikolu (1) tal-artikolu 115 tal-Kodiċi Ċivili, il-kliem "mhux iktar minn ħamsa u erbgħin sena" għandu jiġi sostitwit bil-kliem "mhux iktar minn tmienja u erbgħin sena".

Emenda
konsegwenzjali
għall-artikolu
210 tal-Kodiċi
Kriminali.
Kap. 9.

13. L-artikolu 210 tal-Kodiċi Kriminali għandu jiġi sostitwit b'dan li ġej:

"Serq jew haġi ta' tarbija, eċċ.

210. Kull persuna li tistax jew taħbi tarbija, jew taħbi t-twelid tagħha, jew tibdel tarbija ma' oħra, jew b'ingann tagħmel tidher tarbija bħala mwielda minn mara li ma tkunx helset, tehel, meta tinsab hatja, il-piena ta' prigunerija minn tmintax-il xahar sa tliet snin."

Emenda
konsegwenzjali
għall-Ordni ta'
Standard
Nazżjonali dwar
il-*Leave* ta'
Prokreazzjoni
Medikament
Assistita.
L.S. 452. 114.

14. Fis-subregolament (1) ta' regolament 2 tal-Ordni ta' *Standard* Nazżjonali dwar il-*Leave* ta' Prokreazzjoni Medikament Assistita, it-tifsira "ġenituri prospettivi" għandha tiġi sostitwita b'dan li ġej:

" "ġenitur prospettiv" tfisser kull persuna, irrispettivament mill-ġeneru jew mill-orjentazzjoni sesswali, li laħqet l-età magġuri u hija riċettur jew utent ta' tekniki ta' prokreazzjoni assistita b'mod mediku regolati taħt l-Att dwar il-Protezzjoni tal-Embrijuni;"

Għanijiet u Raġunijiet

L-għanijiet u r-raġunijiet ta' dan l-Abbozz huma sabiex jipprovdu għall-possibbiltà li jiġu mogħtija b'donazzjoni ċelloli *germ line* u bajd fertilizzat, għall-iffriżar ta' bajd iffertilizzat, u għal dekriminilizzazzjoni ta' surrogazzjoni li ma tkunx kummerċjali.

**A BILL
entitled**

AN ACT to amend the Embryo Protection Act, Cap. 524.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) The short title of this Act is the Embryo Protection (Amendment) Act, 2018, and this Act shall be read and construed as one with the Embryo Protection Act, hereinafter referred to as "the principal Act".

Short title and commencement.
Cap. 524.

(2) This Act shall come into force on such a date as the Minister responsible for health may by notice in the Gazette appoint, and different dates may be so appointed for different provisions or different purposes of this Act.

2. Article 2 of the principal Act shall be amended as follows:

(a) immediately after the definition "Directive", there shall be added the following new definition:

Amendment of
article 2 of the
principal Act.

" "donor" means a third party who donates germ line cells to be used in medically assisted procreation:

Provided that donations by an ascendant to a descendant; descendant to an ascendant; siblings whether of the full or half-blood; persons related by affinity in the direct line shall not be permissible;"

(b) immediately after the definition "embryo" there shall be added the following new definition:

" "embryo donation" refers to the process established in this Act whereby unused embryos are donated to the prospective parent:

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Cap. 16.

Provided that this term shall not produce the same effects of the term adoption under Title III of Book First of the Civil Code;"

(c) the definition "prospective parent", shall be substituted by the following new definition:

" "prospective parent" means any person regardless of gender or sexual orientation, who has attained the age of majority and is a receptor or user of the medically assisted procreation techniques regulated under this Act;" and

(d) immediately after the definition "prospective parent" there shall be added the following new definition:

" "Protocol" means the protocol established in writing by the Authority in terms of this Act."

Amendment of article 4 of the principal Act.

3. (1) Article 4 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof:

(i) in paragraph (a), for the words "medically assisted procreation;" there shall be substituted the words "medically assisted procreation and gamete donation;"

(ii) in paragraph (c), for the words "article 18 is" there shall be substituted the words "this Act are";

(ii) paragraph (f), shall be renumbered as paragraph (h) and immediately after paragraph (e) thereof, there shall be added the following new paragraphs:

"(f) to determine the eligibility and suitability or otherwise of a prospective adoptive parent in terms of the Protocol in those cases where it may give for adoption the fertilised egg cells in terms of this Act and keep a register thereof;

(g) to keep a register of every medically assisted procreation procedure, germ line cell donation, cryo-preservation of germ line cells, cryo-preservation of fertilised eggs and embryo adoption in terms of this Act which shall in all cases remain confidential;"

(b) sub-article (2) thereof shall be substituted by the following:

"(2) Notwithstanding the provisions of any other law and

notwithstanding the provisions of article 7 but subject to the provisions of article 18, the Authority may give for adoption the fertilized egg cells to a third party who qualifies for medically assisted procreation procedures, in those cases where:

(a) after the fertilization of the egg cells but before the implantation of the fertilized egg cells into the womb has taken place death of the woman ensues; or

(b) for any other reason the implantation of the fertilized egg cells into the womb of the prospective parent cannot take place including those cases where the prospective parent refuses said implantation or has reached the maximum permissible age for the implantation thereof or fails to renew the contract with the licensee where the cryo-preserved embryos are being stored for future use:

Provided that the Authority may not give for adoption the fertilised egg cells before the prospective parent has reached the maximum permissible age for the implantation thereof.";

(c) sub-article (3) thereof shall be renumbered as sub-article (4) and immediately after sub-article (2), there shall be added the following new sub-article:

"(3) The adoption of an embryo may only take place further to a decision in writing of the Authority following an application by prospective parent or prospective parents and after determining the eligibility and suitability or otherwise of the applicant or applicants in terms of the Protocol:

Provided that the Authority shall make all reasonable efforts to match prospective adoptive parents with the embryos who require an adoption placement:

Provided further that the identity of the adopter or adopters and the persons from whom the germ line cells originated shall in all cases remain anonymous and the prospective parents shall only be entitled to such generic information as specified in the Protocol:

Provided further that the simultaneous implantation of embryos originating from different persons in a prospective parent during the same cycle is prohibited.";

(d) in the first proviso to sub-article (4) thereof as re-numbered:

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(i) immediately after the words "Provided that" there shall be added the words "in the exceptional case when the embryo has not yet been adopted by the prospective parent or prospective parents";

(ii) for the words "into the womb" there shall be substituted the words "into the womb of the prospective parent"; and

(iii) the second proviso shall be substituted by the following:

"Provided that any person having a juridical interest, or in their absence their legal heir, within twenty days from the date of decision of the Authority for giving for adoption the fertilized egg cells may file a sworn application in the Civil Court (Family Section) to enquire into the validity of the decision of the Authority and there shall be a right of appeal therefrom to the Civil Court (Family Section) before the Court of Appeal by means of an application filed within twenty days from the date of the decision of the Civil Court (Family Section). Where no application is filed before the Civil Court (Family Section) according to the provisions of this article, or where the judicial proceedings are withdrawn or discontinued, or where the judicial proceedings become *res judicata*, the decision of the Authority or the court becomes final:

Provided further that the embryo shall remain cryo-preserved until the decision of the Authority or the court becomes final."; and

(iv) immediately after sub-article (4) thereof as renumbered there shall be added the following new sub-articles:

"(5) When the decision of the Authority or the court giving an embryo for adoption becomes final, that embryo shall be considered as the embryo of the adopter or adopters and the persons from whom the embryo originated shall lose all rights and shall be freed from all obligations with respect thereto.

(6) Save as otherwise provided in this article, once the decision of the Authority giving an embryo

for adoption becomes final, it shall be irrevocable."

4. Article 6 of the principal Act shall be amended as follows:

Amendment of
article 6 of the
principal Act.

(a) in paragraph (a) thereof, for the words "woman from whom the cell originated;" there shall be substituted the words "prospective parent;"

(b) paragraph (b) thereof shall be substituted by the following:

"(b) intentionally fertilizes either more than three egg cells from one woman in the first treatment cycle or more than five egg cells within every subsequent treatment cycle:

Provided that where the person is a medical practitioner, no criminal proceedings can be undertaken against that medical practitioner if the medical practitioner is strictly acting in good faith and according to the Protocol mentioned in this Act:

Provided further that where the prospective parent or prospective parents undergoing medically assisted procreation procedures do not expressly give their consent to the cryo-preservation of embryos and to the donation of fertilized eggs if necessary, in terms of article 18, it shall not be lawful to fertilize more than two (2) eggs within each treatment cycle.";

(c) paragraph (c) thereof shall be substituted by the following:

"(c) transfers more than two fertilized eggs into the prospective parent within each treatment cycle;"

(d) paragraph (f) thereof shall be substituted by the following:

"(f) carries out an artificial fertilization of, or transfers a human embryo into, a woman who is prepared to give up, for commercial gain, her child permanently after birth,";

(e) paragraph (i) of the proviso thereof shall be substituted by the following:

"(i) the prospective parent in respect of the

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conduct referred to in paragraphs (a) and (d); and, or";
and

(f) in paragraph (ii) of the proviso thereof:

(i) for the words "two degrees." there shall be substituted the words "two degrees:"; and

(ii) immediately after there shall be added the following new proviso:

"Provided further that the Minister shall by regulations prescribe the manner in which altruistic surrogacy shall be effected and for any matter incidental and ancillary thereto."

Substitution of article 7 of the principal Act.

5. Article 7 of the principal Act shall be substituted by the following:

"Cryo-preservation of germ line cells and fertilized eggs.

7. (1) Sperm cells may be cryo-preserved in authorized banks during the lifetime of the person from whom they originate.

(2) Oocytes may be cryo-preserved in authorized banks up to the maximum permissible age for the fertilization and transfer thereof into the prospective parent unless they are donated in terms of this Act:

Provided that, in any case, it shall not be lawful to cryo-preserve oocytes after the death of the person from whom they originate:

(3) Fertilized eggs which cannot be transferred into the prospective parent within a treatment cycle shall be cryo-preserved in licensed banks for future use by that prospective parent:

Provided that the cryo-preservation of fertilized eggs shall be regulated by an agreement between the prospective parent or prospective parents and the licensee subject to the prior authorisation of the Authority and shall have a maximum term of validity of five years renewable up to a maximum permissible age for the transfer thereof into the prospective parent in terms of the Protocol:

Provided further that when the maximum permissible age for the transfer of the embryo into the prospective parent is reached, the Authority shall authorize the donation of the cryo-preserved embryo.

(4) Subject to the foregoing subarticles, all other forms of preservation, of germ line cells and fertilized eggs are prohibited and whosoever contravenes this article shall be guilty of an offence and, on conviction, shall be liable to the punishment of a fine (*multa*) of not less than five thousand euro (€5,000) and not exceeding fifteen thousand euro (€15,000) or to imprisonment not exceeding three years or to both such fine and imprisonment:

Provided that when there has been a breach of any provision of this Act, the Authority may order the cryo-preservation of any fertilised egg."

6. Article 8 of the principal Act shall be amended as follows:

Substitution of article 8 of the principal Act.

(a) sub-article (1) thereof shall be substituted by the following:

"(1) Whosoever, other than for the purpose of implantation in a prospective parent or in the surrogate mother as may be authorized by the provisions of this Act disposes of, hands over or acquires a human fertilised egg produced outside the body, or removes such fertilised egg from a prospective parent before the completion of implantation in the womb, shall be guilty of an offence and, on conviction, shall be liable to the punishment of a fine (*multa*) of not less than five thousand euro (€5, 000) and not exceeding fifteen thousand euro (€15,000) or to imprisonment not exceeding three years or to both such fine and imprisonment."; and

(b) in sub-article (2) thereof, for the word "embryo" there shall be substituted the words "fertilised egg".

7. Article 9 of the principal Act shall be substituted by the following:

Substitution of article 9 of the principal Act.

"Donation and use of germ line cells.

9. (1) The donation of germ line cells for the purpose of medically assisted procreation shall be a confidential agreement between the donor and the licensee:

Provided that prior to entering into such an agreement, the licensee shall duly inform the donor of the consequences thereof in terms of this Act:

Provided further that there shall be no link of filiation between the embryo fertilised using donated germ line cells and the donor.

(2) A donor must be over eighteen (18) years of age, have the legal capacity to contract and of good mental and physical health and further satisfies the criteria specified in the Protocol.

(3) A donor of oocytes must not have attained the age of thirty-six (36):

Provided that the Authority may authorise a donor above this age limit in exceptional circumstances specified in the Protocol.

(4) Except in cases of a direct donation, the prospective parents shall only be entitled to obtain such generic information as specified in the Protocol about the donor whose identity shall in all cases remain confidential:

Provided that the anonymous medical records of the donor shall be accessible to the child conceived from the germ line cells of such donor either upon reaching sixteen (16) years of age or, subject to the consent of the Authority, at any earlier stage in exceptional circumstances in which the life or health of the child born from such germ line cells is in risk.

(5) The donation of germ line cells for the purpose of medically assisted procreation shall be limited to one donation only and such donation shall be used in one prospective parent only.

(6) It shall be the responsibility of every licensee receiving donor germ line cells to verify the eligibility and suitability of the donor and the prospective parent to whom the germ line cells are donated in terms of the foregoing provisions, to keep a register with updated records thereof, and to inform the Authority without delay the full details of every donation.

(7) Whosoever uses, transfers or fertilises any germ line cells in contravention of this article shall be guilty of an offence and, on conviction, shall be liable to the punishment of a fine (*multa*) of not less than ten thousand euro (€10,000) and not exceeding twenty-three thousand euro (€23,000) or to imprisonment not exceeding five years or to both such fine and imprisonment:

Provided that where the person is a medical practitioner he shall be exempt from criminal liability where he shows that he took reasonable care to determine that the person from whom the germ line cells originated was a prospective parent or an eligible donor within the meaning of this Act."

8. Article 12 of the principal Act shall be amended as follows:

Amendment of article 12 of the principal Act.

(1) in sub-article (1) thereof:

(a) in paragraph (b) for the word "embryo" there shall be substituted the words "fertilised egg";

(b) in paragraph (c):

(i) immediately after the words "a man" there shall be added the words "before or"; and

(ii) immediately after the words "after his death" there shall be added the words ", except in the case where the deceased has donated his sperm";

(c) in paragraph (d):

(i) immediately after the words "a woman" there shall be added the word "before or"; and

(ii) immediately after the words "after her death" there shall be added the words ", except in the case where the deceased has donated her egg cells"; and

(2) sub-article (2) thereof shall be substituted by the following:

"(2) Nothing in this Act shall be construed or interpreted in a way as to impede, for medical reasons and according to accepted medical norms, the taking and freezing of sperm or egg of a person with the aim of making use of that same sperm or egg at a later stage for the generation of an embryo."

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Amendment of
article 18 of the
principal Act.

9. Article 18 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

"(1) The consent of the prospective parent or parents who are to have access to medically assisted procreation procedures is to be expressed in writing in such form, as may be prescribed by regulations under this Act also specifying whether they consent to cryo-preservation of any supernumerary embryos and whether they consent to the donation of fertilised eggs if necessary, to, and in the presence of the medical practitioner in charge of the procedure:

Provided that where the prospective parents are married or in a stable relationship, their consent shall be expressed jointly in writing in the prescribed form:

Provided further that when the prospective parent or prospective parents give their consent to cryo-preservation of any supernumerary embryos and for the donation of fertilized eggs if necessary, the medical practitioner in charge of the procedure shall implant up to a maximum of two fertilized eggs:

Provided further that when the prospective parent or prospective parents do not give their consent to the cryo-preservation of any supernumerary embryos and to the donation of fertilised eggs if necessary, the medical practitioner in charge of the procedure shall only fertilize up to a maximum of two eggs:

Provided further that consent to cryo-preservation may only be withdrawn in writing by the prospective parent or prospective parents before fertilisation.";

(b) sub-article (2) thereof shall be amended as follows:

(i) for the words "both prospective parents" there shall be substituted the words "the prospective parent or prospective parents";

(ii) paragraph (f) thereof shall be substituted by the following:

"(f) the bioethical issues, including the cryo-preservation process involved as referred to in articles 4 and article 7;"

(iii) in paragraph (g) thereof for the word "procedure;" there shall be substituted the word "procedure"; and

(iv) immediately after paragraph (g) thereof, there shall be added the following new paragraph:

"(h) the circumstances in which the Authority may give for adoption fertilized egg cells to a third party in terms of this Act."; and

(v) in sub-article (4) thereof, for the words "both prospective parents" there shall be substituted the words "the prospective parent or prospective parents".

10. Article 19 of the principal Act shall be substituted by the following:

Substitution of article 19 of the principal Act.

"Status of child born.

19. (1) Any child born as a result of any medically assisted procreation procedure, including cases where the child was born from donated germ line cells or a donated fertilised egg, shall be considered to be the child of the prospective parent or prospective parents who have expressed their consent in writing as provided in article 18 and shall for all intents and purposes of law be deemed to have been naturally born of the same prospective parent or prospective parents without the intervention of any procedure as aforesaid; and notwithstanding the provision of any other law, any such child shall be registered in any act of civil status as the direct descendant of such prospective parent or prospective parents who shall enjoy such rights and bear such duties according to law in respect of such child.

(2) There shall be no link of filiation between the child born from donated germ line cells or an adopted fertilised egg cells and the persons from whom donated germ line cells or adopted fertilised egg originated."

11. Article 22 of the principal Act shall be substituted by the following:

Substitution of article 22 of the principal Act.

"Licence for premises.

Cap. 483.

22. (1) No premises may be used for any activity related to medically assisted procreation unless the premises are licensed for the purpose by the Licensing Authority according to the Human Blood and Transplants Act and any regulations made thereunder.

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(2) It shall be the duty of every licensee to keep a confidential register with full details of every medically assisted procreation procedure, germ line cell donation, cryo-preservation of germ line cells and cryo-preservation of fertilised eggs in terms of this Act and to pass on this information to the Authority without delay."

Consequential amendment to article 115 of the Civil Code. Cap. 16.

12. In paragraph (a) of sub-article (1) of article 115 of the Civil Code, for the words "not more than forty-five years" there shall be substituted the words "not more than forty-eight years".

Consequential amendment to article 210 of the Criminal Code. Cap. 9.

13. Article 210 of the Criminal Code shall be substituted by the following:

"Kidnapping or concealing an infant, etc.

210. Any person found guilty of kidnapping, or concealing, an infant or of suppressing its birth, or of substituting one infant for another, or for commercial gain of suppositiously representing an infant to have been born of a woman who had not been delivered of a child, shall, on conviction, be liable to imprisonment for a term from eighteen months to three years."

Consequential amendment to the Leave for Medically Assisted Procreation National Standard Order. S.L. 452. 114.

14. In sub-regulation (1) of regulation 2 of the Leave for Medically Assisted Procreation National Standard Order the definition "prospective parent" shall be substituted by the following:

" "prospective parent" means any person regardless of gender or sexual orientation, who has attained the age of majority and is a receptor or user of the medically assisted procreation techniques regulated under the Embryo Protection Act;"

Objects and Reasons

The objects and reasons of the Bill is to provide for the possibility to donate germ line cells, for the donation of fertilized eggs, for the freezing of fertilized eggs and for the de-criminalization of non commercial surrogacy.

