Letter to the Editor, BJOG Exchange

**Re: Uterine Transplantation in Transgender Women: Medical, Legal and Ethical Considerations**

Sir,

We read with interest the mini-commentary by Hammond-Browning on the medical, legal and ethical considerations associated with uterine transplantation (UTx) in transgender women.**1**Whilst the manuscript adds value and context to this emerging area, the legal implications to which she alludes deserve further discussion. She states that male to female (M2F) transgender women would be unable to undergo embryo transfer, as under current legislation it would be illegal. Whilst the legislation cited is unclear, even upon the strictest interpretation to

which she refers, it is highly vulnerable to challenge.

The relevant section of the Human Fertilisation and Embryology Act 1990, Section 3(2) states ‘no person shall place in a woman a live embryo other than a human embryo’. Of crucialimportance, it is not specified in this section that the woman receiving the embryo needs to have been born female. As rapid progress in reproductive medicine propelled us further into uncharted territories, the aforementioned legislation soon became outdated and was subsequently amended, with the introduction of the Human Fertilisation and Embryology Act 2008. Instead of section 3 (2) referring to ‘human’ embryos, the updated legislation referred to ‘permitted’ embryos. To define ‘permitted’ a separate section (3ZA) was inserted which states that the germ cells must be obtained from ovaries of women, and testis of men respectively. It is in this section where it states that a ‘woman and man include respectively a girl and boy (from birth)’. As ‘woman’ refers to a female adult, this addition appears to relate to the inclusion of young females who have not yet reached adulthood. Owing to the growing recognition and demand for fertility preservation in girls with childhood cancer,2 this inclusion now rightly permits the future use of cryopreserved oocytes or ovarian tissue in *girls* rendered infertile by gonadotoxic therapy or surgery. Moreover, in M2F transgender women, in the context of the growing trend of transitioning at younger ages,**3**and the necessity to preserve germ cells prior to the onset of hormone therapy, this addition is actually essential to ensure that future embryos in this population are ‘permitted’.

Even if the interpretation of Hammond Browning is correct, the statutory provisions would conflict with the Gender Recognition Act 2004, which states a person’s gender becomes, for all purposes, the acquired gender, once a full gender recognition certificate has been issued. A transgender woman seeking UTx may also challenge the aforementioned provisions on the grounds it breaches her Article 8 and 14 rights under the European Convention of Human Rights, in the absence of any persuasive reason or legitimate aim which justifies the interference.4

We concur with Hamond-Browning that for future legislation to be fit for purpose proactive debate on UTx is essential as soon as possible. Given the two Acts which govern this area were drafted before the first livebirth following UTx, and particularly now after 13 livebirths, it is clear current legislation is not equipped to govern this rapidly advancing field. If UTx proves feasible in M2F transgender women as proposed,**5** it is essential that governing regulations evolve concomitantly to meet the demands and needs of modern-day families.

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**References**

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