



Human Fertilisation and Embryology Act 1990

1990 CHAPTER 37

Miscellaneous and General

44 Civil liability to child with disability.

- (1) After section 1 of the ^{M1}Congenital Disabilities (Civil Liability) Act 1976 (civil liability to child born disabled) there is inserted—

“1A Extension of section 1 to cover infertility treatments.

- (1) In any case where—
- (a) a child carried by a woman as the result of the placing in her of an embryo or of sperm and eggs or her artificial insemination is born disabled,
 - (b) the disability results from an act or omission in the course of the selection, or the keeping or use outside the body, of the embryo carried by her or of the gametes used to bring about the creation of the embryo, and
 - (c) a person is under this section answerable to the child in respect of the act or omission,

the child’s disabilities are to be regarded as damage resulting from the wrongful act of that person and actionable accordingly at the suit of the child.

- (2) Subject to subsection (3) below and the applied provisions of section 1 of this Act, a person (here referred to as “the defendant”) is answerable to the child if he was liable in tort to one or both of the parents (here referred to as “the parent or parents concerned”) or would, if sued in due time, have been so; and it is no answer that there could not have been such liability because the parent or parents concerned suffered no actionable injury, if there was a breach of legal duty which, accompanied by injury, would have given rise to the liability.

Changes to legislation: There are currently no known outstanding effects for the Human Fertilisation and Embryology Act 1990, Section 44. (See end of Document for details)

- (3) The defendant is not under this section answerable to the child if at the time the embryo, or the sperm and eggs, are placed in the woman or the time of her insemination (as the case may be) either or both of the parents knew the risk of their child being born disabled (that is to say, the particular risk created by the act or omission).
- (4) Subsections (5) to (7) of section 1 of this Act apply for the purposes of this section as they apply for the purposes of that but as if references to the parent or the parent affected were references to the parent or parents concerned.”
- (2) In section 4 of that Act (interpretation, etc)—
- (a) at the end of subsection (2) there is inserted—
- “and references to embryos shall be construed in accordance with section 1 of the Human Fertilisation and Embryology Act 1990”,
- (b) in subsection (3), after “section 1” there is inserted “1A”, and
- (c) in subsection (4), for “either” there is substituted “any”.

Commencement Information

II S. 44 wholly in force at 1.8.1991 see s. 49(2) and [S.I. 1991/1400, art. 2\(2\)](#)

Marginal Citations

M1 [1976 c. 28.](#)

Changes to legislation:

There are currently no known outstanding effects for the Human Fertilisation and Embryology Act 1990, Section 44.