



# Human Fertilisation and Embryology Act 1990

1990 CHAPTER 37

*Miscellaneous and General*

VALID FROM 08/07/1991

## **43 Keeping and examining gametes and embryos in connection with crime, etc.**

- (1) Regulations may provide—
- (a) for the keeping and examination of gametes or embryos, in such manner and on such conditions (if any) as may be specified in regulations, in connection with the investigation of, or proceedings for, an offence (wherever committed), or
  - (b) for the storage of gametes, in such manner and on such conditions (if any) as may be specified in regulations, where they are to be used only for such purposes, other than treatment services, as may be specified in regulations.
- (2) Nothing in this Act makes unlawful the keeping or examination of any gametes or embryos in pursuance of regulations made by virtue of this section.
- (3) In this section “examination” includes use for the purposes of any test.

### **Commencement Information**

- II** S. 43 wholly in force, s. 43 not in force at Royal Assent see s. 49(2), s. 43(1) in force for certain purposes at 8.7.1991; and s. 43 fully in force at 1.8.1991 see S.I. 1991/1400, art. 2(1)(f)(2)

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

VALID FROM 01/08/1991

#### 44 Civil liability to child with disability.

- (1) After section 1 of the <sup>M1</sup>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.
- (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”.

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#### Commencement Information

**I2** 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.

VALID FROM 08/07/1991

#### 45 Regulations.

- (1) The Secretary of State may make regulations for any purpose for which regulations may be made under this Act.
- (2) The power to make regulations shall be exercisable by statutory instrument.
- (3) Regulations may make different provision for different cases.
- (4) The Secretary of State shall not make regulations by virtue of section 3(3)(c), 4(2) or (3), 30, 31(4)(a), or 43 of this Act or paragraph 1(1)(g) or 3 of Schedule 2 to this Act unless a draft has been laid before and approved by resolution of each House of Parliament.
- (5) A statutory instrument containing regulations shall, if made without a draft having been approved by resolution of each House of Parliament, be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this Act “regulations” means regulations under this section.

#### Commencement Information

**I3** S. 45 fully in force at 8.7.1991 see s. 49(2) and S.I. 1991/1400, art. 2(1)(g)

VALID FROM 01/08/1991

#### 46 Notices.

- (1) This section has effect in relation to any notice required or authorised by this Act to be given to or served on any person.
- (2) The notice may be given to or served on the person—
  - (a) by delivering it to the person,
  - (b) by leaving it at the person’s proper address, or
  - (c) by sending it by post to the person at that address.
- (3) The notice may—
  - (a) in the case of a body corporate, be given to or served on the secretary or clerk of the body,
  - (b) in the case of a partnership, be given to or served on any partner, and

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- (c) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of the association.
- (4) For the purposes of this section and section 7 of the <sup>M2</sup>Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person is the person's last known address and also—
- (a) in the case of a body corporate, its secretary or its clerk, the address of its registered or principal office, and
- (b) in the case of an unincorporated association or a member of its governing body, its principal office.
- (5) Where a person has notified the Authority of an address or a new address at which notices may be given to or served on him under this Act, that address shall also be his proper address for the purposes mentioned in subsection (4) above or, as the case may be, his proper address for those purposes in substitution for that previously notified.

#### Commencement Information

**I4** S. 46 fully in force at 1.8.1991 see s. 49(2) and S.I. 1991/1400, art. 2(2)

#### Marginal Citations

**M2** 1978 c. 30.

VALID FROM 01/08/1991

#### 47 Index.

The expressions listed in the left-hand column below are respectively defined or (as the case may be) are to be interpreted in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

Activities governed by this Act	Section 4(5)
Authority	Section 2(1)
Carry, in relation to a child	Section 2(3)
Directions	Section 2(1)
Embryo	Section 1
Gametes, eggs or sperm	Section 1
Keeping, in relation to embryos or gametes	Section 2(2)
Licence	Section 2(1)
Licence committee	Section 9(1)
Nominal licensee	Section 17(3)
Person responsible	Section 17(1)
Person to whom a licence applies	Section 17(2)

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Statutory storage period	Section 14(3) to (5)
Store, and similar expressions, in relation to embryos or gametes	Section 2(2)
Treatment services	Section 2(1)

#### Commencement Information

**I5** S. 47 wholly in force at 1.8.1991 see s. 49(2) and [S.I. 1991/1400, art. 2\(2\)](#)

#### 48 Northern Ireland.

- (1) This Act (except section 37) extends to Northern Ireland.
- (2) Subject to any Order made after the passing of this Act by virtue of subsection (1)(a) of section 3 of the <sup>M3</sup>Northern Ireland Constitution Act 1973, the activities governed by this Act shall not be transferred matters for the purposes of that Act, but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.

#### Commencement Information

**I6** [S. 48\(1\)](#) in force 1.4.1991 so far as it extends to s. 37 see [s. 49\(2\)](#) and [S.I. 1991/480, art. 2\(b\)](#)

#### Marginal Citations

**M3** [1973 c. 36.](#)

#### 49 Short title, commencement, etc.

- (1) This Act may be cited as the Human Fertilisation and Embryology Act 1990.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be appointed for different provisions and for different purposes.
- (3) Sections 27 to 29 of this Act shall have effect only in relation to children carried by women as a result of the placing in them of embryos or of sperm and eggs, or of their artificial insemination (as the case may be), after the commencement of those sections.
- (4) Section 27 of the <sup>M4</sup>Family Law Reform Act 1987 (artificial insemination) does not have effect in relation to children carried by women as the result of their artificial insemination after the commencement of sections 27 to 29 of this Act.
- (5) Schedule 4 to this Act (which makes minor and consequential amendments) shall have effect.
- (6) An order under this section may make such transitional provision as the Secretary of State considers necessary or desirable and, in particular, may provide that where activities are carried on under the supervision of a particular individual, being activities which are carried on under the supervision of that individual at the commencement of sections 3 and 4 of this Act, those activities are to be treated, during such period as may be specified in or determined in accordance with the order, as authorised by a licence

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(having, in addition to the conditions required by this Act, such conditions as may be so specified or determined) under which that individual is the person responsible.

- (7) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend, with such exceptions, adaptations and modifications (if any) as may be specified in the Order, to any of the Channel Islands.

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**Subordinate Legislation Made**

**P1** [S. 49\(2\)\(6\)](#): power exercised by S.Is: 1990/2165, 1991/480, 1991/1400, 1991/1781, 1994/1776

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**Marginal Citations**

**M4** [1987 c. 42.](#)

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