

SCHEDULES

SCHEDULE 17

Section 171

STORAGE OF GAMETES AND EMBRYOS

PART 1

AMENDMENTS TO HUMAN FERTILISATION AND EMBRYOLOGY ACT 1990

Introductory

- 1 The Human Fertilisation and Embryology Act 1990 is amended as follows.

Maximum storage periods

- 2 (1) Section 14 (conditions of storage licences) is amended as follows.
- (2) In subsection (1), for paragraph (c) substitute—
- “(c) that the requirements of subsection (3) (maximum storage periods) are met,”.
- (3) For subsections (3) to (5) substitute—
- “(3) The requirements referred to in subsection (1)(c) are as follows—
- (a) gametes must not be kept in storage for longer than such period not exceeding 55 years beginning with the day on which they are first placed in storage as the licence may specify;
 - (b) an embryo must not be kept in storage for treatment purposes for longer than such period not exceeding 55 years beginning with the day on which it is first so kept as the licence may specify;
 - (c) an embryo that is kept in storage for the research or training purpose but not for treatment purposes must not be so kept for longer than such period not exceeding 10 years beginning with the day on which consent was given under Schedule 3 to the storage of the embryo for that purpose as the licence may specify;
 - (d) a human admixed embryo must not be kept in storage for longer than such period not exceeding 10 years beginning with the day on which it is first placed in storage as the licence may specify.
- (4) Where under Schedule 3 consent is given to the storage of an embryo for the training or research purpose by different persons on different days, the reference in subsection (3)(c) to the day on which consent was given is to be taken as a reference to the last of those days.
- (5) For the purposes of this section—

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- (a) “treatment purposes” are purposes referred to in paragraph 2(1)(a) or (b) of Schedule 3;
- (b) the “training purpose” is the purpose referred to in paragraph 2(1)(ba) of that Schedule;
- (c) the “research purpose” is the purpose referred to in paragraph 2(1)(c) of that Schedule.”

3 In section 47 (index), omit the entry for the “Statutory storage period”.

4 In Schedule 3 (consents), in paragraph 2(2)(a), for “statutory storage period” substitute “period for which, by virtue of section 14(3), the gametes, embryo or human admixed embryo may be stored under the licence”.

Disposal of material

5 In section 14 (conditions of storage licences), in subsection (1), after paragraph (c) insert—

- “(ca) that any gametes, embryos or human admixed embryos that have been kept in storage pursuant to the licence must, once they may no longer lawfully be so kept, be removed from storage and disposed of, and”.

6 In section 17 (the person responsible), in subsection (1)(c), for “allowed to perish” substitute “removed from storage”.

Consent to storage

7 (1) Schedule 3 (consents) is amended as follows.

(2) In paragraph 1—

- (a) in sub-paragraph (1), before the first “and” insert “any renewal of consent,”;
- (b) in sub-paragraph (2), before the first “and” insert “any renewal of consent by a person unable to sign,”;
- (c) in sub-paragraph (3)—
 - (i) the words from ““effective consent” to the end become paragraph (a);
 - (ii) after that paragraph insert—

“(b) references to renewal of consent are to renewal of consent to the storage of any gametes or embryo under paragraph 11A or 11C.”

(3) In paragraph 3, in sub-paragraph (1), after “gives” insert “or renews”.

(4) After paragraph 11 insert—

“Renewal of consent to storage of gametes

11A (1) This paragraph applies where—

- (a) the gametes of a person (“P”) are in storage,
 - (b) P’s consent to the storage of the gametes is required under paragraph 8(1),
 - (c) there is effective consent from P to the storage of the gametes,
- and

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- (d) the gametes are being kept for use for the purposes of providing treatment services to—
 - (i) P, or
 - (ii) P and another person together.
- (2) The person keeping the gametes in storage (“K”) must, in each consent period, request P to renew consent to storage of the gametes within the renewal period.

For the meaning of “consent period” and “renewal period”, see paragraph 11B.
- (3) A request under sub-paragraph (2) must be given in writing before the start of the renewal period.
- (4) The duty in sub-paragraph (2) ceases to apply if K is notified that P has died.
- (5) The duty in sub-paragraph (2) does not apply in relation to any consent period if—
 - (a) K has at any time been informed in writing that P has been certified as lacking capacity to renew consent to storage of the gametes, and
 - (b) K has not subsequently been informed in writing, before the start of the renewal period which relates to that consent period, that P has been certified as having capacity to renew consent to storage of the gametes.
- (6) P renews consent by informing K in writing that P consents to the storage of the gametes.
- (7) If P’s consent is not renewed under sub-paragraph (6) before the end of the consent period, K must, as soon as possible after the end of that period, give a notice to P stating that if P does not renew consent before the end of the renewal period, the gametes will be removed from storage and disposed of.
- (8) P’s consent to the storage of the gametes is to be taken as having been withdrawn at the end of a renewal period that relates to a consent period if—
 - (a) K has complied with the requirements of sub-paragraphs (2) and (7) in relation to that consent period, and
 - (b) P’s consent is not renewed under sub-paragraph (6) before the end of the renewal period.

But this is subject to sub-paragraphs (9) and (10).

- (9) If, in a case referred to in sub-paragraph (8)(a) and (b), P dies before the end of the renewal period—
 - (a) P’s consent is not to be taken as withdrawn under sub-paragraph (8), but
 - (b) if at the end of the period of 10 years beginning with the day on which P died there is still effective consent from P to the storage, P’s consent is to be taken as withdrawn at that time.

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- (10) If, in a case referred to in sub-paragraph (8)(a) and (b), before the end of the renewal period P is certified as lacking capacity to renew consent—
 - (a) P’s consent is not to be taken as withdrawn under sub-paragraph (8), but
 - (b) if at the end of the period of 10 years beginning with the day on which P was so certified there is still effective consent from P to the storage, P’s consent is to be taken as withdrawn at that time.
 - (11) But P’s consent is not to be taken as withdrawn under sub-paragraph (10)(b) if, before the time it would be taken to be withdrawn under that sub-paragraph—
 - (a) P is certified as having capacity to renew consent to storage of the gametes, and
 - (b) P renews consent to storage of the gametes by informing K in writing that P consents to their storage.
 - (12) In a case where P renews consent under sub-paragraph (11)(b), this paragraph applies subsequently as if references to a consent period were to—
 - (a) the period of 10 years beginning with the day on which P so renewed consent, and
 - (b) each successive period of 10 years.
- 11B (1) For the purposes of paragraph 11A, each of the following is a “consent period”—
- (a) the period of 10 years beginning with the relevant day, and
 - (b) each successive period of 10 years.
- (2) In sub-paragraph (1)(a) “relevant day” means—
- (a) the day on which the gametes are first placed in storage, or
 - (b) in a case where sub-paragraph (3) or (5) applies, the day on which P gives consent to the storage of the gametes.
- (3) This sub-paragraph applies where the gametes are taken from or provided by P before P attains the age of 18 years and, at the time the gametes are first stored—
- (a) P has not attained the age of 16 years and is not competent to deal with the issue of consent to storage of the gametes, or
 - (b) P has attained that age but, although not lacking capacity to consent to the storage of the gametes, is not competent to deal with the issue of consent to their storage.
- (4) In relation to Scotland, sub-paragraph (3) is to be read as if, for paragraphs (a) and (b), there were substituted “P does not have capacity (within the meaning of section 2(4) of the Age of Legal Capacity (Scotland) Act 1991) to consent to storage of the gametes”.
- (5) This sub-paragraph applies where the gametes are taken from or provided by P after P attains the age of 16 years and, at the time the gametes are first stored, P lacks capacity to consent to their storage.
- (6) In paragraph 11A “the renewal period”, in relation to a consent period, means the period which—

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- (a) begins 12 months before the end of the consent period, and
 - (b) ends 6 months after the end of the consent period.
- (7) In paragraph 11A “certified” means certified in writing by a registered medical practitioner.
- (8) In paragraph 11A and this paragraph, in relation to Scotland, references to a person lacking or having capacity to consent or renew consent are to be read as references to the person being or not being incapable (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000) of consenting or renewing consent.

Renewal of consent to storage of embryos

- 11C (1) This paragraph applies where—
- (a) an embryo, the creation of which was brought about *in vitro*, is in storage,
 - (b) the embryo is being kept for use for the purposes of providing treatment services to—
 - (i) a person (“P”) whose gametes or human cells were used to bring about the creation of the embryo, or
 - (ii) P and another person together,
 - (c) P’s consent to the storage of the embryo is required under paragraph 8(2), and
 - (d) there is effective consent from P to the storage of the embryo.
- (2) The person keeping the embryo in storage (“K”) must, in each consent period, request P to renew consent to storage of the embryo within the renewal period.
- For the meaning of “consent period” and “renewal period”, see paragraph 11D.
- (3) A request under sub-paragraph (2) must be given in writing before the start of the renewal period.
- (4) The duty in sub-paragraph (2) ceases to apply if—
- (a) K is notified that P has died, or
 - (b) K is notified under paragraph 4A(1)(c) of the withdrawal of a person’s consent to storage of the embryo.
- (5) The duty in sub-paragraph (2) does not apply in relation to any consent period if—
- (a) K has at any time been informed in writing that P has been certified as lacking capacity to renew consent to storage of the embryo, and
 - (b) K has not subsequently been informed in writing, before the start of the renewal period which relates to that consent period, that P has been certified as having capacity to renew consent to storage of the embryo.
- (6) P renews consent by informing K in writing that P consents to the storage of the embryo.

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- (7) If P's consent is not renewed under sub-paragraph (6) before the end of the consent period, K must, as soon as possible after the end of that period, give a notice to P stating that if P does not renew consent before the end of the renewal period, the embryo will be removed from storage and disposed of.
- (8) P's consent to the storage of the embryo is to be taken as having been withdrawn at the end of a renewal period that relates to a consent period if—
 - (a) K has complied with the requirements of sub-paragraphs (2) and (7) in relation to that consent period, and
 - (b) P's consent is not renewed under sub-paragraph (6) before the end of the renewal period.

But this is subject to sub-paragraphs (9) and (10).

- (9) If, in a case referred to in sub-paragraph (8)(a) and (b), P dies before the end of the renewal period—
 - (a) P's consent is not to be taken as withdrawn under sub-paragraph (8), but
 - (b) if at the end of the period of 10 years beginning with the day on which P died there is still effective consent from P to the storage, P's consent is to be taken as withdrawn at that time.
- (10) If, in a case referred to in sub-paragraph (8)(a) and (b), before the end of the renewal period P is certified as lacking capacity to renew consent—
 - (a) P's consent is not to be taken as withdrawn under sub-paragraph (8), but
 - (b) if at the end of the period of 10 years beginning with the day on which P was so certified there is still effective consent from P to the storage, P's consent is to be taken as withdrawn at that time.
- (11) But P's consent is not to be taken as withdrawn under sub-paragraph (10)(b) if, before the time it would be taken to be withdrawn under that sub-paragraph—
 - (a) P is certified as having capacity to renew consent to storage of the embryo, and
 - (b) P renews consent to storage of the embryo by informing K in writing that P consents to its storage.
- (12) In a case where P has renewed consent under sub-paragraph (11)(b), this paragraph applies subsequently as if references to the consent period were to—
 - (a) the period of 10 years beginning with the day on which P so renewed consent, and
 - (b) each successive period of 10 years.
- (13) Where P's consent is taken as withdrawn under this paragraph, K must, as soon as possible, take all reasonable steps to give notice of the withdrawal to each person whose gametes or human cells were used to bring about its creation.
- (14) Storage of the embryo remains lawful until—

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- (a) the end of the period of 6 months beginning with the day on which P’s consent is taken as withdrawn under this paragraph, or
 - (b) if, before the end of that period, K receives a notice from each person notified under sub-paragraph (13) stating that the person consents to the disposal of the embryo, the time at which the last of those notices was received.
- 11D (1) For the purposes of paragraph 11C, each of the following is a “consent period”—
 - (a) the period of 10 years beginning with the day on which the embryo is first placed in storage, and
 - (b) each successive period of 10 years.
- (2) In paragraph 11C “the renewal period”, in relation to a consent period, means the period which—
 - (a) begins 12 months before the end of the consent period, and
 - (b) ends 6 months after the end of the consent period.
- (3) In paragraph 11C “certified” means certified in writing by a registered medical practitioner.
- (4) In paragraph 11C, in relation to Scotland, references to a person lacking or having capacity to renew consent are to be read as references to the person being or not being incapable (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000) of renewing consent.”

PART 2

TRANSITIONAL PROVISION

Interpretation

- 8 (1) In this Part of this Schedule—
 - “the commencement day” means 1 July 2022;
 - “the transitional period” means the period beginning with the commencement day and ending with 30 June 2024.
- (2) In this Part of this Schedule—
 - “the 1990 Act” means the Human Fertilisation and Embryology Act 1990;
 - “the 2009 Regulations” means the Human Fertilisation and Embryology (Statutory Storage Period for Embryos and Gametes) Regulations 2009 ([S.I. 2009/1582](#));
 - “the 2020 Regulations” means the Human Fertilisation and Embryology (Statutory Storage Period for Embryos and Gametes) (Coronavirus) Regulations 2020 ([S.I. 2020/566](#)).
- (3) In this Part of this Schedule—
 - “gamete storage licence” means a licence under Schedule 2 to the 1990 Act that authorises the storage of gametes;
 - “embryo storage licence” means a licence under Schedule 2 to the 1990 Act that authorises the storage of embryos;

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“storage licence” means a licence under Schedule 2 to the 1990 Act that authorises the storage of gametes, embryos or human admixed embryos;

“pre-commencement”, in relation to a storage licence, or a storage licence of any description, means granted before the commencement day and “post-commencement” means granted on or after that day.

(4) In this Part of this Schedule—

“statutory storage period” has the same meaning as in the 1990 Act immediately before the commencement day;

references to gametes, embryos and human admixed embryos have the same meaning as in that Act;

“the training purpose”, “the research purpose” and “treatment purposes” have the same meanings as in section 14(3)(c) of that Act.

Application of Part 1 to material already in storage

- 9 (1) The amendments in paragraphs 2 to 6 of this Schedule have effect in relation to pre-commencement storage licences under which gametes, embryos or human admixed embryos are kept in storage on or after the commencement day (as well as having effect in relation to post-commencement storage licences).

This is subject to sub-paragraphs (2) and (3).

- (2) In the case of a pre-commencement embryo storage licence, the condition imposed by section 14(3)(c) of the 1990 Act (as substituted by paragraph 2 of this Schedule) does not apply in relation to an embryo which, on the commencement day, is kept in storage for the training or research purpose but not for treatment purposes.
- (3) In the case of any pre-commencement storage licence, the condition imposed by section 14(1)(ca) of the 1990 Act (as substituted by paragraph 5 of this Schedule) applies only in relation to times on or after the commencement day.
- 10 The amendments made by paragraph 7 of this Schedule have effect in relation to the storage of gametes and embryos under a pre-commencement gamete or embryo storage licence, where the gametes or embryos are kept in storage on or after the commencement day (as well as having effect in relation to the storage of gametes and embryos under a post-commencement gamete or embryo storage licence).

Date of first storage

- 11 (1) This paragraph applies if the person storing gametes or an embryo under a pre-commencement gamete or embryo storage licence—
- (a) has, before the end of the transitional period, taken all reasonable steps to establish the date on which the gametes were or embryo was first placed in storage, but
 - (b) is unable to establish that date.
- (2) The person may give a notice to each person whose consent to the storage is required under Schedule 3 to the 1990 Act specifying a date on which the gametes are or embryo is to be regarded as having been first placed in storage.
- (3) Where notice is given under sub-paragraph (2), the gametes are or embryo is to be regarded, for all purposes of the 1990 Act and this Part of this Schedule, as having been first placed in storage on the date specified in the notice.

Storage periods specified in pre-commencement storage licences

- 12 (1) For the purposes of section 14(3)(a) of the 1990 Act (as substituted by paragraph 2 of this Schedule), a pre-commencement gamete storage licence under which, on and after the commencement day, gametes are kept in storage is to be regarded as specifying the period of 55 years beginning with the day on which the gametes were first placed in storage.
- (2) For the purposes of section 14(3)(b) of the 1990 Act (as substituted by paragraph 2 of this Schedule), a pre-commencement embryo storage licence under which, on and after the commencement day, an embryo is kept in storage for treatment purposes is to be regarded as specifying for those purposes the period of 55 years beginning with the day on which the embryo was first so kept.

Storage after expiry of pre-commencement consent

- 13 (1) If a pre-commencement consent to the storage of gametes or an embryo expires at any time in the transitional period, the storage of the gametes or embryo for the remainder of that period is not unlawful merely because of that fact.
- (2) In sub-paragraph (1)—
- (a) “pre-commencement consent” means consent given under Schedule 3 to the 1990 Act before the commencement day;
 - (b) the reference to expiry of consent does not include withdrawal.

Storage with no effective consent prior to commencement

- 14 (1) This paragraph applies in relation to the storage of gametes or an embryo under a pre-commencement gamete or embryo storage licence where, immediately before the commencement day, there is no effective consent to the storage by a relevant person.
- (2) The person keeping the gametes or embryo in storage must request the relevant person to give consent to the storage under Schedule 3 to the 1990 Act.
- (3) A request under sub-paragraph (2) must be given before 1 July 2023 in writing.
- (4) The storage of the gametes or embryo at any time before the end of the transitional period is not unlawful merely because there is no effective consent to the storage by the relevant person.
- (5) In this paragraph—
- “effective consent” means consent under Schedule 3 to the 1990 Act which has not been withdrawn;
 - “relevant person” means a person whose consent is required under Schedule 3 to the 1990 Act to storage of the gametes or embryo.

Time for first renewal of consent

- 15 (1) This paragraph applies in relation to the storage of gametes under a pre-commencement gamete storage licence where the statutory storage period applicable immediately before the commencement day was provided for by—
- (a) regulation 4, 4A, 7 or 8 of the 2009 Regulations, or
 - (b) regulation 4 of the 2020 Regulations.

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- (2) For the purposes of paragraph 11A of Schedule 3 to the 1990 Act (as inserted by paragraph 7 of this Schedule), paragraph 11B(1)(a) of that Schedule has effect as if the reference to the period of 10 years beginning with the relevant day were a reference to the period which—
 - (a) begins with the relevant day, and
 - (b) ends at the end of the statutory storage period referred to in sub-paragraph (1).
- 16 (1) This paragraph applies in relation to the storage of an embryo under a pre-commencement embryo storage licence where the statutory storage period applicable immediately before the commencement day was provided for by—
- (a) regulation 3, 3A, 5 or 6 of the 2009 Regulations, or
 - (b) regulation 3 of the 2020 Regulations.
- (2) For the purposes of paragraph 11C of Schedule 3 to the 1990 Act (as inserted by paragraph 7 of this Schedule), paragraph 11D(1)(a) of that Schedule has effect as if the reference to the period of 10 years beginning with the day on which the embryo was first placed in storage were a reference to the period which—
- (a) begins with the day on which the embryo was first so placed, and
 - (b) ends at the end of the statutory storage period referred to in sub-paragraph (1).

Renewals falling due in the transitional period

- 17 (1) This paragraph applies in relation to the storage of gametes under a pre-commencement gamete storage licence in a case where—
- (a) paragraph 11A of Schedule 3 to the 1990 Act applies in relation to the storage, and
 - (b) for the purposes of that paragraph, the first consent period (see paragraph 11B(1)(a) of that Schedule) ends in the transitional period.
- (2) Where this paragraph applies, paragraph 11A of Schedule 3 to the 1990 Act has effect in relation to that first consent period as if—
- (a) for sub-paragraphs (2) and (3) there were substituted—
 - “(2) The person keeping the gametes in storage (“K”) must request P to renew consent to storage of the gametes before 1 July 2024.
 - (3) A request under sub-paragraph (2) must—
 - (a) be given in writing before 1 July 2023;
 - (b) state that if P does not renew consent before 1 July 2024, the gametes will be removed from storage and disposed of.”;
 - (b) in sub-paragraph (5)(b), for “the start of the renewal period which relates to that consent period” there were substituted “1 July 2023”;
 - (c) sub-paragraph (7) were omitted;
 - (d) for sub-paragraph (8) there were substituted—
 - “(8) P’s consent to the storage of the gametes is to be taken as having been withdrawn at the beginning of 1 July 2024 if—
 - (a) K has complied with sub-paragraph (2), and

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- (b) P's consent is not renewed under sub-paragraph (6) before 1 July 2024.

But this is subject to sub-paragraphs (9) and (10).”;

- (e) in sub-paragraphs (9) and (10), references to the end of the renewal period were to 1 July 2024.

- 18 (1) This paragraph applies in relation to the storage of an embryo under a pre-commencement embryo storage licence in a case where—

- (a) paragraph 11C of Schedule 3 to the 1990 Act applies in relation to the storage, and
- (b) for the purposes of that paragraph, the first consent period (see paragraph 11D(1)(a) of that Schedule) ends in the transitional period.

- (2) Where this paragraph applies, paragraph 11C of Schedule 3 to the 1990 Act has effect in relation to that first consent period as if—

- (a) for sub-paragraphs (2) and (3) there were substituted—

“(2) The person keeping the embryo in storage (“K”) must request P to renew consent to storage of the embryo before 1 July 2024.

- (3) A request under sub-paragraph (2) must—

- (a) be given in writing before 1 July 2023;
- (b) state that if P does not renew consent before 1 July 2024, the embryo will be removed from storage and disposed of.”;

- (b) in sub-paragraph (5)(b), for “the start of the renewal period which relates to that consent period” there were substituted “1 July 2023”;
- (c) sub-paragraph (7) were omitted;
- (d) for sub-paragraph (8) there were substituted—

“(8) P's consent to the storage of the embryo is to be taken as having been withdrawn at the beginning of 1 July 2024 if—

- (a) K has complied with sub-paragraph (2), and
- (b) P's consent is not renewed under sub-paragraph (6) before 1 July 2024.

But this is subject to sub-paragraphs (9) and (10).”;

- (e) in sub-paragraphs (9) and (10), references to the end of the renewal period were to 1 July 2024.