

## SCHEDULES

### SCHEDULE 17

#### STORAGE OF GAMETES AND EMBRYOS

#### 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;  
“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.
- (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.

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*Status: This is the original version (as it was originally enacted).*

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- (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
      - (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.

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*Status: This is the original version (as it was originally enacted).*

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- (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.