

*Changes to legislation: There are currently no known outstanding effects for the Health and Care Act 2022, PART 1. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 17

#### 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.

##### **Commencement Information**

**II** Sch. 17 para. 1 in force at 1.7.2022, see s. 186(3)

##### *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

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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—

- (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.”

**Commencement Information**

**I2** Sch. 17 para. 2 in force at 1.7.2022, see s. 186(3)

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

**Commencement Information**

**I3** Sch. 17 para. 3 in force at 1.7.2022, see s. 186(3)

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”.

**Commencement Information**

**I4** Sch. 17 para. 4 in force at 1.7.2022, see s. 186(3)

**Commencement Information**

**I2** Sch. 17 para. 2 in force at 1.7.2022, see s. 186(3)

**I3** Sch. 17 para. 3 in force at 1.7.2022, see s. 186(3)

**I4** Sch. 17 para. 4 in force at 1.7.2022, see s. 186(3)

*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”.

**Commencement Information**

**I5** Sch. 17 para. 5 in force at 1.7.2022, see s. 186(3)

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

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**Commencement Information**

**I6** Sch. 17 para. 6 in force at 1.7.2022, see s. 186(3)

**Commencement Information**

**I5** Sch. 17 para. 5 in force at 1.7.2022, see s. 186(3)

**I6** Sch. 17 para. 6 in force at 1.7.2022, see s. 186(3)

*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
  - (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.

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- (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.
- (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

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- (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—
  - (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.

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*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.
  - (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

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- (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—
    - (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

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- (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.”

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**Commencement Information**

**I7** Sch. 17 para. 7 in force at 1.7.2022, see s. 186(3)



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