

Storage period for gametes and embryos: the law and its challenges

by Natalie Gamble

More fertility patients are storing gametes and embryos for longer. Some are preserving fertility for the future because they are undergoing medical treatment or a gender transition which will affect their fertility, or because they want to guard against ageing. Others keep gametes or embryos in storage to expand their families after prior treatment. Whatever the reason, the law puts limits on the length of storage, and the rules are not simple.

The basic maximum storage period for both gametes and embryos is 10 years. As a general rule, embryos or gametes must be allowed to perish if this storage period comes to an end before they are used in treatment. That rule can seem harsh and arbitrary, limiting the choices patients have over what should happen to their own genetic material. Patients who are told that the law requires them to dispose of their gametes or embryos before they feel ready can find this difficult and hugely emotional.

To avoid the clock running out, some patients choose to export gametes or embryos to another country which allows longer storage. This always needs to be planned in good time since the HFEA's General Direction only



permits a straightforward export process if the storage period has at least six months still to go.

The general rule is, however, relaxed in some cases. Certain patients are permitted to extend their storage period, if they are or are likely to become prematurely infertile. The aim of the law is to help patients whose gametes or embryos represent a last chance, patients such as cancer survivors who have been through chemotherapy who no longer have the option to create more.

The current regulations were passed in 2009, and allow storage of gametes or embryos to be renewed every ten years, up to an overall maximum of 55 years. Before each renewal, a doctor must confirm in writing that either the gamete provider or the intended recipient is or is likely to become 'prematurely infertile', and the gamete providers must consent in writing to extending the storage. One pitfall to watch out for is that the right paperwork has to be in place before the storage period expires. It is therefore important that clinics stay on top of deadlines, giving patients plenty of time to think through their options, give informed consent and secure the necessary medical confirmation if they do want to extend their storage.



The other tricky thing is that these are not the only rules. The law on extending storage was changed on 1 October 2009 before which a different set of extended storage regulations for embryos (the 1996 regulations) applied. Although the 1996 regulations are now historic, they still matter because patients who first stored embryos before 1 October 2009 can opt to extend storage under either set of rules.

In some ways the old rules were more restrictive. Extended storage was not permitted in most surrogacy and donation cases. They also required certification of 'complete' infertility and by two doctors rather than one. However, in other ways the old rules were more liberal: they allowed embryos to be stored until the gamete provider was approximately age 55

without the need to renew every ten years, and they were less strict about the consent and medical certification being in place before expiry of the original deadline. Sometimes, the old rules can therefore 'save' embryos which might otherwise be unlawfully stored.

In practice, the interaction of two quite complex sets of regulations can be difficult to apply to real cases on the ground. The simple question of 'when does my storage period expire?' is not always easy to answer. We are seeing increasing numbers of cases in which patients are seeking legal advice because their clinics have told them that their gametes or embryos have inadvertently been kept in storage too long and must now immediately be allowed to perish. The news has often come as a shock, and options which might have been available to extend storage in this country, or to apply for export in good time, may have been lost.

The emotional impact is enormous, which is why it is so important that clinics understand these rules properly, and that they communicate clearly with patients about how long they can store their embryos or gametes for right from the start. Patients need time to make their peace with the timeframe they have, and they deserve the proper opportunity to make a clear decision about whether to use their gametes or embryos in treatment or to move them abroad. To do that in an emotionally healthy way, they need to know with absolute clarity when their own clock runs out.

Natalie Gamble is a leading lawyer specialising in fertility and founded the firm NGA Law.



Extend the Limit

by Catherine Hill

#ExtendTheLimit: improving women's reproductive choices

Increasing numbers of women in the UK are facing the stark choice of having to destroy their frozen eggs or become a mother before they are ready to do so because of an outdated and unscientific law – Progress Educational Trust's #ExtendTheLimit campaign aims to change that

#ExtendTheLimit is a new campaign from fertility and genetics charity the Progress Educational Trust (PET) which aims to improve women's reproductive choices by extending the 10-year storage limit for eggs frozen for non-medical (social) reasons. PET is aiming to gather 1000,000 signatures to its online #ExtendTheLimit petition at <https://tinyurl.com/extendthelimit> which will then trigger a debate on issue at Westminster, and is urging the Government to act compassionately and change the arbitrary and outdated law.

PET's director Sarah Norcross said: 'PET's #ExtendTheLimit campaign calls on the Government to show compassion and extend the 10-year storage limit for social egg freezing, and asks the UK public to show their support by signing the #ExtendTheLimit petition at <https://tinyurl.com/extendthelimit> Gathering 100,000 signatures will mean the Government has to debate a change in the law at Westminster. Just a minor amendment is necessary to remove this cruel and pointless legislation and will give so many women hope for a fertile future.'

Why change is needed

If a woman wants to try to preserve her fertility, the best time to freeze her eggs is in her 20s but, under current UK law, women who freeze their eggs for non-medical reasons can only store them for 10 years. This means if a woman freezes her eggs when she is 28 she has to be ready to use them before she is 38.

If she isn't ready, she faces a limited number of distressing and potentially financially-crippling options: to have her eggs destroyed, and with them perhaps her best or only chance of becoming a biological mother; to become a parent before she is ready to do so, either with a partner or as a solo mum via sperm donation, or to try to fund the transfer of her eggs to a fertility clinic overseas and have fertility treatment abroad at a later date.