

A recent change in the law now enables all patients to store eggs, sperm and embryos for up to 55 years, providing they re-consent at least every 10 years.

It is important that you consider the information below carefully whether you are contemplating storing gametes (eggs or sperm) or embryos for the first time, or you are considering extending the storage of your embryos or gametes.

### **Success rates**

The storage of gametes or embryos allows these to be used in the future.

The likelihood of a live birth resulting from previously cryopreserved embryos or gametes is as follows:-

**Embryos:** Our most recent data published by the HFEA is from our 2018 patients, who achieved an overall live birth rate of 34% when using cryopreserved embryos. This is comparable to the national average of 31% for the same time period. Success rates from cryopreserved embryos will be dependent on a number of factors, including maternal age at the time of embryo creation, the stage at which the embryos are cryopreserved and the methods used for the cryopreservation (which have been developed and refined over the years) – therefore length of storage may have an indirect effect on success rates due to the methods used for embryo culture and cryopreservation at the time of storage.

**Eggs:** Current national data suggests a live birth rate of 4-5% per egg cryopreserved, success rates are cumulative for each egg stored so for example, 10 eggs should offer an approximate live birth rate of around 45%.

**Sperm:** We don't have specific live birth rates for treatments using frozen sperm, but data suggests a comparable egg fertilisation rate to fresh sperm. This is dependent on the quality of the sperm sample prior to cryopreservation so fertilisation rates will be case dependent.

### **Risks of storage**

There is a possible risk of deterioration or loss of viability of gametes or embryos as a result of storage. We have taken steps to reduce these risks but cannot eliminate them completely. Gametes and embryos are stored in temperature-controlled vessels that are continuously monitored and linked to our alarm system. Thaw survival rates will vary depending on the material stored and the techniques used to cryopreserve the gametes/embryos at the time of initial storage and have improved over the years as cryopreservation techniques have evolved. Thaw survival rates for current cryopreservation methods are over 95% but are significantly less for older techniques.

There is a theoretical risk of cross-contamination between samples whilst stored together in the same storage vessels. This risk is very small due to the storage methods we use. These include using a 'closed system' where the gametes/embryos are sealed within their own small device, keeping them isolated from other samples in the vessel and using separate storage vessels depending on the virology screening status of the gamete providers.

### **Withdrawal**

Any patient or donor may withdraw or amend their consent to storage at any point. Please contact us if you wish to discuss your wishes. Please note that stored embryos can only be used with the consent of both the egg and the sperm providers used to make the embryos, including in separation or divorce.

## Renewal

You can only renew your consent beyond the initial 10 year period if you intend to use the gametes/embryos in your own treatment. Please consider carefully whether or not you want to renew your consent to store your gametes or embryos every time you are contacted about renewing your consent to storage.

The consent renewal process is set out in law. We are required to contact you at least 12 months before the expiry of the 10-year consent period to seek your renewal consent to store for up to 10 more years. If, at the end of the renewal period (6 months after consent expiry), you have not provided written renewed consent then your consent will be deemed to have been withdrawn, and then your gametes or embryos will be removed from storage and disposed of. Once a further 10-year storage period is reached, the centre will again be required to follow the renewal process. This will be required at each successive 10-year period until a maximum storage period of 55 years has been reached at which time the gametes or embryos must be removed from storage and disposed of.

In the case of embryos, the law allows centres to continue to lawfully store embryos for a further six months after the end of the renewal period if one or both patients (gamete providers) do not renew their consent to storage of their embryos within the renewal period. This means embryos can potentially remain in storage lawfully for up to 12 months after the end of the consent period. **However, storage cannot be renewed, or the embryos used in this final 6 months.**

Both gamete providers must renew consent to storage in order for storage of embryos to continue to remain in storage and be used in treatment. If gamete providers do not agree on renewing consent to storage the centre will not be able to extend the storage period and the embryo(s) would have to be removed from storage.

If you wish to store your gametes or embryos for a period of less than 10 years, the centre will contact you to ask if you wish to consent for an additional period before the next 'renewal period' commences.

## Posthumous use

If you consent to your eggs, sperm or embryos being used for treatment after your death, the law permits your eggs, sperm or embryos to be stored for your named partner's use for up to 10 years from the date of your death. To enable this you must consent to both use and storage of your eggs, sperm or embryos continuing after death. This storage period cannot be extended and the storage period after death cannot exceed the maximum storage period for 55 years from the date of first storage.

If your named partner does not use your eggs or sperm within this 10 year period (or less if you specified a shorter time), then 10 years (or less, if specified) after your death, your clinic will be required to remove all your eggs or sperm from storage and dispose of them. In the case of embryos, the law allows centres to lawfully store embryos for a further six months after the end of the 10-year period (or less if the maximum period of 55 years from date of first storage is reached) from the date of death. Your embryos can only be used and stored during this 10 year (or less) period if there is also effective consent for use and storage from the other gamete provider.

If you consent for a period less than 10 years then this is the period that the gametes or embryos can remain in storage. This means you will not be able to benefit from the full amount of time (10 years) permitted in law.

If you have eggs, sperm or embryos in storage and in the event of your death, you would like your partner to be able to use your eggs or embryos in their own treatment or in treatment with a surrogate, your partner must be named in section 2 of the WT or MT form. If a surrogacy arrangement would be required, you will need to receive relevant information, be offered counselling, undergo further screening tests and complete additional consent forms before you die. It is therefore vitally important that you and your clinic discuss posthumous use and the different treatment options in those circumstances. The person named at section 2 of the WT or MT form will be the only person able to use your stored eggs, sperm or embryos for treatment after your death. If you do not name a person at section 2 of the WT or MT form, then no one will be permitted to use your eggs or embryos for

treatment after your death. If your circumstances change after you have completed this form (for example, if you separate from the partner you have named on this form), or if you wish to withdraw your consent, you will need to contact the clinic to complete further forms.

It is possible to register a deceased partner as the legal parent of a child resulting from treatment performed after their death as long as the deceased partner has consented to this on the appropriate HFEA consent form (MT, PP or PBR).

In the event of your death, you may have gametes or embryos that your named partner does not want to use (for example, because the eggs or embryos are not needed, or are not suitable, for treatment). On the HFEA MT and WT consent forms, you can consent to your gametes or embryos being used or stored after your death for potential use by designated healthcare professionals to practice the techniques involved in fertility treatment. If you give your consent to your gametes being used for training purposes you then need to indicate how long you consent to your eggs being stored after your death for training purposes, up to a maximum of 55 years. If you give your consent to your unused embryos being for training purposes you then need to indicate how long you consent to your embryos being stored after your death for training purposes up to a maximum of 10 years.

You should be aware that embryos can only be used or stored for training purposes if the other gamete provider (your partner or donor) has also given consent for this. If gametes in storage are used to create embryos after the your death, those embryos can only be stored and used for 10 years from the date of the gamete provider's death, not from the date of first storage of the embryos.

The centre would routinely contact the named partner 12 months before the storage period ends to inform them that at the end of the 10-year period any of the unused gametes or embryos will be removed from storage and disposed.

Please be aware that the consent of both gamete providers is needed to store embryos. If a gamete provider has who has died has consented to the posthumous storage and use of their embryos, the consent of the other gamete provider is still needed for storage to continue. If the living gamete provider withdraws their consent to storage at any point, in the posthumous 10 year storage period, embryos must be removed from storage and disposed of.

If your gametes or embryos are placed in storage when you do not have a partner, and then you subsequently meet a partner who you want to be able to use your gametes or embryos in the event of your death, you must inform the centre and update your consent form(s) as soon as possible. Partners who are not named on the relevant HFEA consent form(s) would not be legally able to use gametes or embryos even if you have provided effective consent to posthumous use.

If your partner is deceased and we have their eggs or sperm stored from before the end of June 2022, and they have consented to longer than 10 years of storage after death, the clinic can complete a Medical Practitioner's Statement 10 years after the date of their death and at 10 yearly intervals, to allow storage to continue. When embryos are created using these eggs or sperm, there is a specific form for the surviving partner to complete [ET (PH) form] which allows storage of the embryos for up to 55 years.

## **Mental incapacity**

You can consent to your eggs, sperm or embryos being stored +/- used in the event of loss of your mental capacity. The law allows storage in these circumstances for up to 10 years from date of certification of loss of mental capacity. If you consent for a period less than 10 years then this is the time period that the gametes or embryos can remain in storage. This means you will not be able to benefit from the full amount of time (10 years) permitted in law.

It is now unlawful to store a patient's gametes for any longer than 10 years from the date on which mental capacity is lost, as certified by a medical practitioner, unless the patient has regained mental capacity and renewed their consent to a longer storage period in the intervening time. It is not however, unlawful to store embryos for a further six months after the 10 years from the date on which they lose mental capacity. Once gametes/ embryos can no longer legally be stored they will be removed from storage and disposed of.

In the event that you lose mental capacity, if you would like your partner to be able to use your sperm or embryos in their own treatment or treatment with a surrogate, your partner must be named in section 2 of the WT or MT form. If a surrogacy arrangement would be required, you will need to receive relevant information, be offered counselling, undergo further screening tests and complete additional consent forms whilst you have capacity. It is therefore vitally important that you discuss your wishes in the event of your mental incapacity with us, and the different treatment options in those circumstances. The person named at section 2 of the WT or MT form will be the only person able to use your stored eggs, sperm or embryos in treatment if you lose mental capacity. If you do not name a person at section 2 of this form, then no one will be permitted to use your eggs, sperm or embryos for treatment purposes if you lose mental capacity. If your circumstances change after you have completed this form (for example, if you separate from the partner you have named on this form), or if you wish to withdraw your consent, you will need to contact your clinic to complete further forms.

If you consent to your eggs, sperm or embryos being used for treatment in the event that you lose mental capacity, the law permits your eggs, sperm or embryos to be stored for your named partner's use for 10 years from the date that a medical practitioner certifies in writing that you lack capacity. You must consent to both use and storage of your eggs, sperm or embryos continuing after you lose capacity. This storage period cannot be extended. Please be aware that the storage period after loss of capacity cannot exceed the maximum storage period of 55 years from the date of first storage. If you or your partner loses mental capacity, the other someone must inform the centre, to enable us to carry out your wishes, as documented in your consent forms. You may therefore wish to organise for a friend/ relative to be responsible for informing the clinic. Similarly, you should get in touch with the clinic as soon as possible if you are certified as having regained capacity within the 10 year period.

If you **do not** regain mental capacity within 10 years (or less if you specified a shorter period on your consent form) of being certified as lacking capacity:

- If your named partner does not use your gametes within this specified period, then 10 years (or less, as specified) from the date that you were certified as lacking capacity, your clinic will be required to remove all your sperm or eggs from storage and dispose of them.
- If your named partner does not use your embryos, whether created before or after you lose capacity, within this 10 year (or less) period, then 10 years (or less) and 6 months after the date that you were certified as lacking capacity, your clinic will be required to remove all your embryos from storage and dispose of them.
- The centre would routinely contact the named partner 12 months before the storage period ends to inform them that at the end of the storage period any of the unused gametes or embryos will be removed from storage and disposed of.
- Your embryos can only be used and stored during the period you specified if there is also effective consent for use and storage from the other gamete provider.

If you **do** regain mental capacity within the time period you consented to for use/storage during mental incapacity after being certified as lacking capacity:

- You will be able to renew your consent to storage of your gametes or embryos for your treatment. You will need to notify the clinic as soon as possible if you are certified as having regained mental capacity and wish to renew your consent to storage of your unused sperm or embryos.
- If you do not notify your clinic, then it will be required to remove all your unused gametes from storage 10 years (or less, as specified on your consent form), or in the case of embryos 10 years (or less) and 6 months, from the date that a medical practitioner certified in writing that you lack capacity and dispose of them.
- You will not be able to renew your consent to storage of your embryos if, before you were certified as having regained mental capacity, there is no longer effective consent by the other gamete provider, and your embryos have been disposed of.

If your gametes or embryos are placed in storage when you do not have a partner, and then you subsequently meet a partner who you want to be able to use your gametes or embryos in the event of your mental incapacity, you must inform the centre and update your consent form(s) as soon as possible. Partners who are not named on the relevant HFEA consent form(s) would not be legally able to use gametes or embryos even if you have provided effective consent for use in the event of mental incapacity.

If you wish for your gametes or embryos to continue to be stored in the result of your mental incapacity, but not for your partner to be able to use them in treatment, you can specify this on the relevant HFEA consent form.

## **Use of donated gametes or embryos**

If you are using donated gametes or embryos in your treatment, the maximum storage period is the consent period the donor has given consent for at the time of treatment. If you are using your own gametes to create embryos with a donor's gametes you should be aware that you can only renew consent to storage of the embryos for the maximum period specified by the donor. Only gamete providers can give consent to storage.

## **Donating gametes or embryos**

If you are donating your gametes or embryos for use in someone else's treatment you can consent for storage for up to 55 years and you do not need to renew this consent on a regular basis.

You will need to consider the implications of the duration of storage for now and in the future including potential large age gaps between donor-conceived siblings and the possibility of being contacted by donor-conceived people any time after they reach 16-18 years of age. We will discuss your preferred maximum storage period with you and you have the right to change the consent period or withdraw your consent to storage at any time (using HFEA consent form WCS).

If you consent to a long period of storage the centre may or may not keep the gametes or embryos for the full period to which you have consented for. By consenting to donate your gametes or embryos you are agreeing to them being stored if you were to die or lose mental capacity. If you do not want your gametes or embryos to be used in the event of your death or mental incapacity you should state this as a restriction on the relevant HFEA consent form.

## **Surrogacy**

In order to allow your partner to use your eggs or embryos after your death or if you lose the capacity to consent, we will need to carry out additional screening, counselling and consents, similar to those used for egg and sperm donors. These additional tests and appointments take time and carrying them out significantly delays treatment. Thankfully, the majority of patients will never need to be screened for the posthumous use of their eggs or embryos.

There is national agreement that the screening, counselling and additional surrogacy consents do not need to be completed prior to starting your current treatment, but will be required for consent to be valid before posthumous use or before you lose the capacity to consent.

Eggs/embryos cannot be used posthumously with a surrogate unless full screening for donation, counselling and additional consents have been completed. In order to be eligible for NHS funded screening for donation, you will need to meet the access criteria for NHS funded fertility treatment and already require the use of a surrogate. If you do not fulfil these criteria, you will be required to pay for all screening tests, should you wish your embryos/ eggs to be used posthumously with a surrogate. We are not currently able to offer this screening on a self-funded basis. If you do wish to complete the screening tests elsewhere, we can inform you which tests are required.

## **Other uses of gametes or embryos**

When deciding whether or not you want to give or renew your consent to storage, you may also want to consider other options such as donation for use in someone else's treatment, training or research.

On the HFEA MT and WT consent forms, you can consent to your gametes or embryos being used and stored to allow designated healthcare staff to practice the techniques involved in fertility treatment. Giving your consent to your gametes or embryos being used and stored for training purposes means that gametes or embryos which are not used, or are not suitable for use, in each fresh cycle of treatment can be either used immediately for training or stored for potential future use in training. The decision to consent to your gametes or embryos being used for training purposes will not affect your treatment in any way.

If you give your consent to storing your gametes for research or training purposes, your clinic may store your gametes for these purposes for up to 55 years from the date that your gametes are first placed in storage. You do not need to periodically renew this consent. If you give your consent to storing your embryos for research or training, your clinic may store your embryos for these purposes for a maximum of 10 years from the date that you give consent on the consent form (MT or WT). This period cannot be extended. You should be aware that embryos can only be used if the other gamete provider (your partner or donor) has also given consent. You will also be given the opportunity to donate your gametes/embryos to training purposes at the time of consent renewal (or extension consent expires before a 10 year renewal point).

If you would like to consider donating your gametes or embryos for use in someone else's treatment or for use in research please ask us for further information about this.

## **Sperm storage for intrauterine insemination**

If you and your partner are going to have intrauterine insemination treatment using your sperm you may want to consider self-funded sperm storage for use in future treatment. You may also want to consider giving your consent to use of stored sperm in IVF or ICSI. Please discuss this with us if you would like any further information.

## **Contracts and payment for storage**

The NHS can only fund the storage of gametes and embryos for people who are eligible for NHS funded treatment. If you do not meet these access criteria you will be asked to pay for storage and you will need to sign a contract regarding this. The contract will outline the contractual agreements between you and the centre and the steps the centre will take if these terms and conditions are not upheld. If storage fees are not paid, ultimately the centre will be required to dispose of these gametes or embryos. This process is separate from the consent process which allows gametes or embryos to be stored legally for any period of up to 55 years, providing this consent is renewed every 10 years. Consent periods are independent of payments for storage fees and consent periods are not restricted or linked to storage fees.

Storage fees are set nationally and are set to cover the costs incurred to the NHS of providing this service. These fees may increase in the future. You will receive information about the cost of storage fees when your contract is up for renewal. Our price-list for self-funded activities is also available on our website.

If you have gametes or embryos in store with us it is very important that you keep us up to date with your latest contact information so that we can contact you about renewing your consent to storage at the appropriate times. If we do not have your up to date contact information and as a result are unable to obtain renewal of consent to storage during the renewal period then in law this is considered as a withdrawal of consent to storage. The centre would then be required to remove the gametes or embryos from storage and dispose of them. It is also important that you notify the centre of any changes in your circumstances which may affect your consent decision (for example if you have separated from your partner or have a new partner) so that your wishes can be carried out if you die or lose mental capacity.

## **Counselling**

Our fertility counsellors can support you with the decision whether or not to store or renew storage of your gametes or embryos. If you would like to make an appointment for counselling, please contact us on 0131 242 2441.