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STATUTORY INSTRUMENTS

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**2009 No. 2478**

**HUMAN FERTILISATION AND EMBRYOLOGY**

The Human Fertilisation and Embryology  
(Supplementary Provision) Order 2009

<i>Made</i>	- - - -	<i>9th September 2009</i>
<i>Laid before Parliament</i>		<i>14th September 2009</i>
<i>Coming into force</i>	- -	<i>1st October 2009</i>

The Secretary of State makes the following Order in exercise of the powers conferred by section 64 of the Human Fertilisation and Embryology Act 2008<sup>(1)</sup>:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Human Fertilisation and Embryology (Supplementary Provision) Order 2009 and shall come into force on 1st October 2009.

(2) In this Order—

“the 1990 Act” means the Human Fertilisation and Embryology Act 1990<sup>(2)</sup>.

(3) Expressions used in this Order and in the 1990 Act have the same meaning as in that Act.

**Storage of permitted embryos which have been kept in storage for more than five years**

2.—(1) Paragraph (2) applies to an embryo if—

- (a) it is a permitted embryo within the meaning of section 3ZA of the 1990 Act<sup>(3)</sup> (permitted eggs, permitted sperm and permitted embryos);
- (b) the embryo is intended for use in treatment services;
- (c) the embryo is on 1st October 2009 being stored on premises to which a licence under paragraph 1 (licences for treatment) or paragraph 2 (licences for storage) of Schedule 2 to the 1990 Act<sup>(4)</sup> (activities for which licences may be granted) relates;

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(1) 2008 c. 22.

(2) 1990 c. 37.

(3) Section 3ZA was inserted into the 1990 Act by section 3(5) of the Human Fertilisation and Embryology 2008 Act (“the 2008 Act”).

(4) Paragraph 1 and 2 of Schedule 2 to the 1990 Act were amended by paragraph 1 and 2 of Schedule 2 to the 2008 Act.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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(d) immediately before that date, the statutory storage period applicable to the embryo under subsection (4) of section 14 of the 1990 Act (conditions of storage licences) was 5 years; and

(e) on that date, the embryo has been kept in storage for more than 5 years.

(2) In relation to the storage, on or after 1st October 2009, of an embryo to which this paragraph applies, the statutory storage period applicable under subsection (4) of section 14 of the 1990 Act is to be taken to be such period, not exceeding the maximum period specified in paragraph (3), as the licence may specify.

(3) That maximum period is a period of 10 years beginning with the day on which the embryo was first placed in storage.

Signed by authority of the Secretary of State for Health.

9th September 2009

*Gillian Merron*  
Minister of State,  
Department of Health

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision supplementary to section 15(3) of the Human Fertilisation and Embryology Act 2008 (“the 2008 Act”), which amends section 14(4) of the Human Fertilisation and Embryology Act 1990 (“the 1990 Act”). Section 15(3) extends the maximum period that an embryo can be stored for from five years to ten years subject to the period set out in the licence.

This Order makes provision for permitted embryos stored on premises holding a treatment licence where such embryo has, on 1<sup>st</sup> October 2009, been stored for more than five years, and where immediately before that date a five year statutory storage period applied to the embryo. Article 2 applies a maximum storage period of ten years to such embryos, provided that they are intended for use in treatment, calculated from the date the embryo was first placed in storage. This new maximum storage period will only apply in relation to storage on, or after, 1st October 2009.