

HUMAN TISSUE (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 3: Tissue Sample Or Organs No Longer Required for Procurator Fiscal Purposes

Section 44 – Authorisation of use etc after examination: child 12 years of age or over

108. **Section 44(1)** provides that a child who is 12 years of age or over may authorise the use of tissue sample, or the retention and use of an organ, which is removed from the child's body after the child's death when that sample or organ was removed but is no longer required for the purposes of the functions of the fiscal. Authorisation is needed where the use relates to the purposes of education, training or research. Subsection (2) provides that such authorisation by the child must be in writing, signed by the child and witnessed by 2 witnesses and may be withdrawn in writing signed by the child. Alternatively, if the child is blind or unable to write, such authorisation and the withdrawal of such authorisation may be signed on behalf of the child. If it is so signed it must be witnessed by one witness. Subsection (3) provides that where a signatory signs authorisation or withdraws authorisation on behalf of a child in this way, the authorisation or withdrawal must contain a statement signed by the signatory and the witness that the child expressed the intention to either give or withdraw the authorisation and requested the signatory to sign on his or her behalf. Subsections (4) and (6) provide that any such authorisation on behalf of a child who is 12 years of age or over who is blind or unable to write must contain or be accompanied by certification from both the signatory and the witness that in their opinion the child understands the effect of the authorisation and is not acting under undue influence in giving it. A similar certification is required from both witnesses to an authorisation which is signed by the child himself or herself under subsection (2). Subsection (5) provides that nothing in the provisions in subsection (2) dealing with authorisation or withdrawal signed by a signatory on the child's behalf prevents a child who is blind from giving or withdrawing authorisation without such a signatory under subsection (2).