

HUMAN TISSUE ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Miscellaneous and General

Miscellaneous

Section 45: Non-consensual analysis of DNA

58. It is an offence under section 45(1) to have any bodily material (that is, any material which has come from a human body and which consists of or contains human cells) intending to analyse the DNA in it without qualifying consent, subject to certain exceptions. This offence applies to the whole of the UK. The offence does not apply if the results of the analysis are to be used for excepted purposes and these are listed in Part 2 of Schedule 4. These include general purposes such as medical treatment and criminal justice purposes, as well as more specific matters which largely reflect what may be done without consent under Part 1 of the Act, with modifications for Scotland where necessary. Paragraph 11 of Schedule 4 also has the effect that, if consent to use material has been obtained under section 1(1) of the Act, it is not necessary to obtain a separate consent where that use involves DNA analysis.
59. What constitutes qualifying consent is set out in Part 1 of Schedule 4. It may be given to analysis of DNA for any purpose. It can be given by the person from whose body the material came or someone with parental responsibility if the person is a child. Once the person has died, consent may be given by anyone who stood in a qualifying relationship (as listed in section 54(9)) with the deceased immediately before he died. The hierarchy referred to in section 27(4) does not apply to this list.
60. Certain material is outside the scope of the offence altogether and this includes material from a person who died more than 100 years ago and embryos outside the body (as these are subject to separate regulation by the Human Fertilisation & Embryology Act 1990). Also outside the scope of the offence are existing holdings of material where the identity of the person from whom it came is not known, and is not likely to become known. There is also an exemption if the person reasonably believes the material they have to be excepted.