

HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Amendments of Human Fertilisation and Embryology Act 1990

Section 13: Consent to use or storage of gametes, embryos and human admixed embryos etc.

Cells from children

110. Paragraphs 6 and 8 of Schedule 3 to the 1990 Act are amended by paragraph 9(5) and 11(3) of Schedule 3 to the Act, to allow the use of cells from a child under the age of 18 years (or, in Scotland, 16 years) to create an embryo, and the subsequent use and storage of such embryos, without the child's consent, if consent is given by a person with parental responsibility *and* a number of other safeguards are in place (see below). The Act inserts new paragraphs 12(4) and (6) and 13(2) and (3) of Schedule 3 to the 1990 Act to make equivalent provision for the use of a child's cells to create human admixed embryos and for the use and storage of such embryos. These provisions also ensure that if a child attained the age of 18 or became competent before that time, they would be able to vary or withdraw any consent given by a person with parental responsibility (subject to the usual limits on varying and withdrawing consent set out in paragraph 4 of Schedule 3 to the 1990 Act). These provisions cannot be relied on unless the Authority are satisfied that the "parental consent conditions" set out in new paragraph 15 of the 1990 Act are met. The Authority need to be satisfied that:
- i. The child suffers from or is likely to develop a serious disease, serious disability or any other serious medical condition;
 - ii. The proposed research is intended to increase knowledge about the disease/disability/ condition, or its treatment and care (or similar conditions);
 - iii. There are reasonable grounds for believing research of comparable effectiveness could not be carried out using the cells of a person who could consent themselves.
111. Paragraph 2(2) of Schedule 3 ensures that where consent was given to the use of a child's cells to create an embryo or human admixed embryo and for the storage of that embryo the consent would have to state what should happen to the embryo if the child dies. In addition any consent by a person to the use of their cells to create an embryo or human admixed embryo is to endure their death, unless otherwise stated.
112. New paragraphs 22(5) to (7) of Schedule 3 to the 1990 Act set out the meaning of the terms "parental responsibility" and "capacity" in relation to England, Wales, Scotland and Northern Ireland. They also provide for the provisions relating to children to apply, in Scotland, to those under 16 years rather than those under 18.