

HUMAN TISSUE ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Removal, Storage and Use of Human Organs and Other Tissue for Scheduled Purposes

Section 2: “Appropriate consent”: children

15. **Section 2** sets out the meaning of 'appropriate consent' in relation to activities regarding the body of a deceased child, or relevant material from living or deceased children. For the purposes of this section, children are people under the age of 18.
16. Living children who are competent to do so may give their own consent. If they are not competent or choose not to decide, appropriate consent will be that of a person with parental responsibility for them. Competence is not defined in the Act, but will be established according to common law principles (the 'Gillick test').
17. Where a child has died, if he or she was competent and made an advance decision (to give or refuse consent), that will apply. *Subsections (4) to (6)* provide that consent of a competent child to have his or her body used for anatomical examination or public display must be in writing and witnessed. No-one other than a competent child may give consent to the use of his or her own body for purposes of anatomical examination or public display. Anatomical examination is defined in section 54. *Subsection (5)* of this section provides that prior written, witnessed consent to anatomical examination is only necessary in relation to material which is not excepted material (as defined in section 12), that is, in relation to a whole body, or material which has come from a whole body during an anatomical examination. For other scheduled purposes, such as the carrying out of a *post mortem* examination or the use of organs for transplantation, the consent of someone with parental responsibility will be appropriate consent, but only if the child did not deal with the issue of consent. *Subsection (7)* provides that if a child has died and there is no-one with parental responsibility, someone in a 'qualifying relationship' may give consent to removal, storage or use of the child's body or material from the body. (The group of next of kin etc who qualify for these purposes is given at section 54(9) and dealt with further at section 27(4)).