

HUMAN TRANSPLANTATION (WALES) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 6: Consent: children

35. **Section 6** sets out the arrangements that apply to children and young people aged under 18 who die in Wales. These restate the provisions in section 2 of the Human Tissue Act 2004 (the 2004 Act), except that under this Act children and young people are able to appoint one or more representatives to take a decision on consent, in the same way as adults. For children and young people, either their own express consent will apply, or if that has not been given (and they have not appointed a representative able to act), the consent of a person with parental responsibility will apply. Where no such person exists then the consent of a person standing in a ranked qualifying relationship to them, as provided for in section 27(4) of the 2004 Act, must be given.
36. Where children make any decision on consent, the decision is effective only if they are competent to take such a decision. In the interpretation section (section 19(2)) competence is defined in this context as meaning where it would appear to a reasonable person that the child has sufficient understanding to make an informed decision. This test of competence also applies to consent to transplantation activities involving excluded materials (see section 7) and to a child appointing representatives to take the decision on consent after the child's death (see section 8).