

Changes to legislation: There are currently no known outstanding effects for the Human Fertilisation and Embryology Act 1990, Cross Heading: Consent to use of human cells etc. not required: adult lacking capacity. (See end of Document for details)

SCHEDULES

SCHEDULE 3

CONSENTS TO USE ^{F1}OR STORAGE OF GAMETES, EMBRYOS OR HUMAN ADMIXED EMBRYOS ETC]

Textual Amendments

- F1** Words in Sch. 3 heading substituted (1.10.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), s. 68(2), [Sch. 3 para. 2](#); [S.I. 2009/2232](#), art. 2(w)

Commencement Information

- I1** Schedule 3 wholly in force at 1.8.1991 see s. 49(2) and [S.I. 1991/1400](#), art. 2(2)

^{F1}Consent to use of human cells etc. not required: adult lacking capacity

Textual Amendments

- F1** Sch. 3 paras. 15-21 and cross-headings inserted (1.10.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), s. 68(2), [Sch. 3 para. 14](#); [S.I. 2009/2232](#), art. 2(w)

- 17 (1) The conditions referred to in paragraph 16(1)(a) are as follows.
- (2) Condition A is that P suffers from, or is likely to develop, a serious disease, a serious physical or mental disability or any other serious medical condition.
 - (3) Condition B is that P lacks capacity to consent to the use of P's human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of a project of research.
 - (4) Condition C is that the person responsible under the licence has no reason to believe that P had refused such consent at a time when P had that capacity.
 - (5) Condition D is that it appears unlikely that P will at some time have that capacity.
 - (6) Condition E is that any embryo or human admixed embryo to be created *in vitro* is to be used for the purposes of a project of research which is intended to increase knowledge about—
 - (a) the disease, disability or medical condition mentioned in sub-paragraph (2) or any similar disease, disability or medical condition, or
 - (b) the treatment of, or care of persons affected by, that disease, disability or medical condition or any similar disease, disability or medical condition.
 - (7) Condition F is that there are reasonable grounds for believing that research of comparable effectiveness cannot be carried out if the only human cells that can be

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used to bring about the creation *in vitro* of embryos or human admixed embryos for use for the purposes of the project are the human cells of persons who—

- (a) have attained the age of 18 years and have capacity to consent to the use of their human cells to bring about the creation *in vitro* of an embryo or human admixed embryo for use for the purposes of the project, or
- (b) have not attained that age but are competent to deal with the issue of consent to such use of their human cells.

(8) In this paragraph and paragraph 18 references to the person responsible under the licence are to be read, in a case where an application for a licence is being made, as references to the person who is to be the person responsible.

(9) In relation to Scotland—

- (a) references in sub-paragraphs (3) to (5) to P lacking, or having, capacity to consent are to be read respectively as references to P being, or not being, incapable (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000) of giving such consent, and
- (b) sub-paragraph (7) is to be read with the following modifications—
 - (i) in paragraph (a), for “have capacity to consent” substitute “are not incapable (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000) of giving consent”, and
 - (ii) in paragraph (b), for “are competent to deal with the issue of” substitute “have capacity (within the meaning of section 2(4ZB) of the Age of Legal Capacity (Scotland) Act 1991) to ”.]

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