

# HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008

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## 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.***

#### **Adults who lack capacity**

108. The Act inserts new paragraph 16 to 19 of Schedule 3 to the 1990 Act. Paragraph 16 provides an exception to the requirement for an effective consent, found in paragraph 6 of Schedule 3, for the use of cells from a person who has attained 18 years of age, to bring about the creation of an embryo or human admixed embryo and for the subsequent storage and use of any resulting embryo. Reliance on this exception is subject to the conditions set out in new paragraphs 17 and 18. The Authority must be satisfied that:
- i. the adult lacks capacity and is unlikely to have capacity again;
  - ii. the adult suffers from, or is likely to develop a serious disease, serious disability or other serious medical condition;
  - iii. the proposed embryonic research is intended to increase knowledge about that disease/ disability/ condition or its treatment and care (or similar conditions);
  - iv. there is no evidence that the adult would have refused to participate at any time they may have had capacity in the past;
  - v. 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;
  - vi. the licence holder has taken steps to identify a carer for the adult who could be consulted or has nominated someone if a carer could not be found;
  - vii. the carer or nominee has been consulted as to their opinion of what the adult who lacks capacity's wishes or feelings would be about the proposed use of their cells – if they indicated they did not think that they would want them to be used then the researcher could not use their cells.
109. New paragraph 19 of Schedule 3 to the 1990 Act provides that if the adult donor acquired capacity they can give notice that their cells are not to be used to create any further embryos, or that any existing embryos may not be used in research.