

# HUMAN TISSUE (SCOTLAND) ACT 2006

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## EXPLANATORY NOTES

### THE ACT – AN OVERVIEW

#### **Part 1: Transplantation Etc.**

##### ***Section 1 – Duties of the Scottish Ministers as respects transplantation, donation of body parts etc.***

4. **Section 1** sets out the Scottish Ministers' duties with respect to promoting, developing and supporting transplantation programmes and the donation of parts of the human body for transplantation, including a duty to promote the taking of any necessary measures relating to the quality and safety, storage and use of body parts donated for transplantation.

##### ***Section 2 – Assistance and support***

5. **Section 2** allows the Scottish Ministers to provide assistance and support to those providing, or proposing to provide, a service relating to transplantation. 'Assistance' is defined to include financial assistance.

##### ***Section 3 – Use of body of deceased person for transplantation, research etc***

6. **Section 3** provides that a part of a deceased person's body can be removed after that person's death and used for all or any of the purposes of transplantation, research, education or training or audit. The removal of the body part must have been authorised appropriately, in terms of section 6, 7, 9, 10 or 11, and must be undertaken either by a registered medical practitioner or by someone who is authorised to do so in accordance with regulations made by the Scottish Ministers (section 12(1)). The other requirements of section 12 must also have been satisfied.

##### ***Section 4 – Disapplication of sections 3, 6 to 12 and 14 in certain circumstances***

7. **Section 4** makes clear that none of the relevant provisions of Part 1 of the Act apply in certain circumstances. They do not affect anything done for the purposes of the functions or under the authority of the procurator fiscal. They do not apply in relation to the removal of a body part during a post mortem examination or the subsequent retention and use of the part. They do not apply in relation to the retention of tissue samples or organs removed from a body during an examination carried out for the purposes of, or under the authority, of the procurator fiscal before the coming into force of the relevant provisions in the legislation relating to authorisation. Nor do they apply to the removal, retention or use of part of a deceased person's body if the person died at least 100 years before section 3 comes into force.

##### ***Section 5 – Consent by procurator fiscal to removal of part of body***

8. Subsection (1) is based on the equivalent provision in section 1(5) of the [Human Tissue Act 1961 \(c.54\)](#) and provides that where a person knows, or has reason to believe, that an examination of the body is or may be required for the purposes of the procurator

fiscal, the person may not remove a body part, or authorise anyone else to remove a body part, for the purposes of section 3(1), except with the consent of the procurator fiscal. Subsection (2) provides that for the purposes of subsection (1), the fiscal's consent can be given verbally, provided it is confirmed in writing as soon as reasonably practicable.

### ***Section 6 – Authorisation: adult***

9. Subsection (1) makes clear the adult's power to authorise the removal and use of a part of the adult's own body after death for one or more of the purposes specified in section 3(1) (transplantation, research, education or training or audit). Subsection (2) provides that such authorisation may be in writing or can be given verbally, thus ensuring that an adult can express authorisation for transplantation over the telephone. Authorisation can be withdrawn, but the withdrawal must be in writing. Subsection (3) provides that if the adult is blind or unable to write, such written withdrawal may be signed by another adult on behalf of the adult who is unable to write. If it is so signed, it must be witnessed by one witness. Subsection (4) provides that withdrawal of authorisation by virtue of subsection (3) must contain a statement signed by both the signatory and the witness that the person who is blind or unable to write expressed his or her intention to withdraw the authorisation and requested the signatory to sign the withdrawal on his or her behalf. Subsection (5) provides that nothing in subsection (3) prevents an adult who is blind from withdrawing authorisation in accordance with paragraph (b) of subsection (2). Subsection (6) provides that for authorisation in writing under section 6(2)(a)(i), "writing" includes representation of a character in visible form. The effect of this provision is that authorisation provided via the NHS Organ Donor Register, Organ Donor cards or any other method of tick box authorisation will come within the scope of authorisation by the adult "in writing" for the purposes of section 6(2)(a)(i).

### ***Section 7 – Authorisation by adult's nearest relative***

10. **Section 7(1)** provides that where no authorisation by the adult for the removal and use of body parts for transplantation is in force immediately before the adult's death, the adult's nearest relative can authorise the removal and use of any body part for one or more of the purposes set out in section 3(1), subject to the terms of section 7(4).
11. **Section 7(2)** provides that if there is in force immediately before an adult's death authorisation by the adult of the removal and use of body parts for transplantation, but that authorisation does not expressly include removal and use of the body parts for education or training, research or audit, the nearest relative can authorise the removal and use for one or more of those purposes, subject to the terms of section 7(4).
12. **Section 7(3)** provides that if there is in force immediately before an adult's death authorisation of the removal and use of a particular body part for transplantation and the authorisation does not expressly include removal and use of another particular part, the nearest relative can authorise the removal and use of the other particular part for one or more of the purposes of education and training, research or audit, subject to the terms of section 7(4).
13. **Section 7(4)(a)** provides that the nearest relative may not give authorisation under section 7(1) if he or she has actual knowledge that the adult was unwilling for any part of the adult's body, or the part in question, to be used for transplantation. Section 7(4)(b) provides that the nearest relative may not give authorisation under section 7(2) if he or she has actual knowledge that the adult was unwilling for the body part to be used for the purpose in question. Section 7(4)(c) provides that the nearest relative may not give authorisation under section 7(3) if he or she has actual knowledge that the adult was unwilling for any other part of the adult's body, or the other particular part in question, to be used for transplantation.
14. **Section 7(5)** provides that "unwillingness" should not be implied simply by the fact that the adult had not provided authorisation as respects the particular purpose, use or part.

15. **Section 7(6)(a)** provides that authorisation by virtue of subsections (1), (2) and (3) must be in writing and signed, or may be expressed verbally by the nearest relative. Paragraph (b) of subsection (6) provides that such authorisation for the purposes of research, education, training or audit may be withdrawn in writing and signed by the nearest relative.
16. **Section 7(7)** prevents the withdrawal of authorisation given by an adult's nearest relative under section 7(1) for the purposes of transplantation.

### ***Section 8 – Authorisation: child 12 years of age or over***

17. Subsection (1) allows a child who is 12 years of age or older to authorise the removal and use of a part of their body after the child's death for one or more of the purposes of transplantation, education or training, research or audit. Subsection (2) provides that such authorisation must be in writing, and that the authorisation may be withdrawn in writing. Subsection (3) provides that if the child is blind or unable to write, such authorisation and the withdrawal of such authorisation may be signed by an adult on the child's behalf and witnessed by one witness. Subsection (4) provides that such authorisation or withdrawal of authorisation must contain a statement signed by both the adult and the witness that the child expressed the intention to either give or withdraw the authorisation and requested the adult to sign on his or her behalf. Subsection (5) provides that any such authorisation on behalf of a child 12 years of age or over who is blind or unable to write must contain or be accompanied by certification from both the adult and the witness that in their opinion the child understands the effect of the authorisation and is not acting under undue influence in giving it. Subsection (6) provides that nothing in subsection (3) prevents a child who is blind from giving or withdrawing authorisation in accordance with paragraph (a) or (b) of subsection (2). In the situation whereby authorisation is given in writing by the child himself or herself under section 9(2)(a), rather than by a signatory on the child's behalf, subsection 9(7) provides that "writing" includes representation of a character in visible form. The effect of this provision is that such authorisation provided via the NHS Organ Donor Register, Organ Donor cards or any other method of tick box authorisation will come within the scope of authorisation by the child "in writing" for the purposes of section 9(2)(a).

### ***Section 9 – Authorisation as respects child who dies 12 years of age or over by person with parental rights and responsibilities***

18. **Section 9** provides that if there is in force immediately before the death of a child who died 12 years of age or over no authorisation by the child of the removal and use of any part of the child's body for transplantation, a person who immediately before the death of the child had parental rights and responsibilities in relation to the child (but who is not a local authority) may authorise the removal and use of any part for one or more of the purposes of transplantation, education or training, research or audit.
19. Subsections (2) to (5) repeat, in the context of those who had parental rights and responsibilities in relation to a child who died 12 years or older immediately before the child's death, the provisions relating to authorisation by an adult's nearest relative, as described in paragraphs 12 to 15 above.
20. Subsection (6)(a) provides that authorisation by virtue of subsections (1), (2) or (3) of section 9 must be in writing and signed, or expressed verbally, by the person giving the authorisation. Paragraph (b) of subsection (6) provides that such authorisation given for the purposes of research, education, training or audit may be withdrawn in writing and signed by the same person who gave the authorisation.
21. Subsection (7) provides that authorisation given by a person by virtue of section 9(1), for the purposes of transplantation, cannot be withdrawn.

***Section 10 – Authorisation as respects a child who dies under 12 years of age***

22. Section 10(1) provides that where a child dies under 12 years of age, authorisation of the removal and use of a part of the child's body for one or more of the purposes of transplantation, education or training, research or audit can be given by a person who immediately before the death of the child had parental rights and responsibilities in relation to the child but who is not a local authority. Section 10(2)(a) provides that such authorisation must be in writing and signed, or expressed verbally, by the person who provides the authorisation. Paragraph (b) of subsection (2) provides that such authorisation given for the purposes of research, education, training or audit may be withdrawn in writing and signed by the same person who gave the authorisation. Section 10(3) provides that authorisation given by a person by virtue of section 10(1) for the purposes of transplantation cannot be withdrawn.

***Section 11 – Removal of part of body of deceased person: further requirements***

23. Section 11(1) provides that removal of a body part for transplantation, or for any of the other purposes set out in section 3(1), must be undertaken by a registered medical practitioner or someone authorised to do so in accordance with regulations made by the Scottish Ministers. Section 11(2) specifies that such regulations can in particular provide for a registered medical practitioner to authorise the removal by a non-practitioner. The intention is to make such regulations so that tissue (as opposed to solid organs) could be retrieved by someone who has been trained to do so but may not be a registered medical practitioner.
24. Subsection (3) provides that the body part may not be removed unless the person who proposes to undertake the removal meets the requirements of section 11(4). In addition, a registered medical practitioner who proposes to authorise another person to undertake the removal must also meet those requirements.
25. The requirements in subsection (4) are that the person undertaking the removal (and where a registered medical practitioner proposes to authorise another person to undertake it, that practitioner) must be satisfied, either by personal examination, or from the personal examination by another registered medical practitioner, that life is extinct; that any necessary consent of the procurator fiscal under section 5(1) has been provided; and that the removal is authorised in accordance with the relevant section of the Act.
26. Subsection (5) provides that the person undertaking the removal (and where a registered medical practitioner proposes to authorise another person to undertake it, that practitioner) is entitled to be satisfied that the relevant authorisation is in place in specified circumstances. The authorisation forms used by the transplant co-ordinators will be adapted to make sure they reflect each of the requirements in relation to written authorisations which are set out in this subsection. Section 11(5)(g) will apply only where the authorisation has been signed by the child under section 9(1) and not where it has been signed by an adult on their behalf.
27. Paragraphs (a), (b), (d), (e), (f), (g), (h), (i), (j) and (k) all relate to written authorisations under various provisions in Part 1 of the Act. Paragraph (k) relates to written authorisation which has been signed by an adult under section 9(1) on behalf of a child who is 12 years of age or over and who is blind or unable to write. These paragraphs reflect the fact that the practitioner and any other person undertaking the removal will need to know that it is acceptable for them to proceed on the basis of the proper authorisation, thereby avoiding any invocation of the provisions of section 16, which provide that an offence is committed if removal and use of the body part is not authorised by the relevant provision in Part 1.
28. Paragraph (c) relates to verbal authorisation by an adult under section 6(1). In such cases, there requires to be what that person undertaking the removal (or the practitioner, as the case may be) considers to be an appropriate record of the authorisation by the adult. The person or practitioner is also entitled to be satisfied that the removal

is authorised in accordance with section 6(1) if the verbal authorisation bears from the record to be as respects the deceased adult, to authorise removal of the part for the purpose in question and to have been expressed verbally by the adult. Similarly, paragraphs (e), (g) and (i) relate to verbal authorisation by an adult's nearest relative under section 7(1), (2) and (3) respectively. Paragraphs (m), (o) and (q) relate to verbal authorisation under section 9(1), (2) or (3) respectively by a person who, immediately before the death of a child who died 12 years of age over, had parental rights and responsibilities in relation to that child. Paragraph (l) relates to verbal authorisation under section 10(1) by a person who, immediately before the death of a child who died under 12 years of age, had parental rights and responsibilities in relation to that child. In such cases, there requires to be what the person undertaking the removal (or the practitioner as the case may be) considers to be an appropriate record of the verbal authorisation. In each of these cases, the person or practitioner is entitled to be satisfied that the removal is authorised in accordance with the relevant authorisation provision if the authorisation bears from that record to demonstrate the matters listed in the relevant paragraph. Again, these provisions reflect the fact that the practitioner and any other person undertaking the removal will need to know when it is acceptable for them to proceed, in light of the offence provisions. What is or is not an appropriate record of the verbal authorisation is a matter to be determined by the practitioner and any other person undertaking the removal. "Appropriate record" is not defined for the purposes of this provision, to avoid being too prescriptive and thereby allow for advancing technology over time in relation to recording devices.

### ***Section 12 – Removal of tissue sample to determine viability of transplantation***

29. Section 12A permits a person removing a part of the body of a deceased person in accordance with an authorisation under Part 1 of the Act for transplantation, to remove and secure the examination of such tissue sample from the body that the person considers necessary or expedient to determine the viability of the transplantation.

### ***Section 13 – Preservation for transplantation***

30. Section 13 provides for the maintenance of a dead body in a condition that would allow transplantation of parts of the body to take place. The provision is intended to allow steps to be taken to preserve the function of a body part until it can be established whether there is authorisation for the use of the body part for transplantation. Subsection (1) provides that where part of a deceased person's body may be suitable for transplantation, the managers of the premises may take steps to preserve the part for use for transplantation and may retain the body for that purpose. However, they may not move the part or body to other premises. Subsection (2) provides that the minimum steps necessary should be taken to preserve the body, and the least invasive procedure used. Subsection (3) provides that authority under subsection (1) extends to any person authorised to act under the authority by the managers of the premises in question and makes clear that preservation must be stopped as soon as it becomes clear that no authorisation will be given for transplantation.
31. Subsections (4) and (5) define the premises where such procedures may be carried out. These premises are a health service hospital and premises in which a registered independent health care service is provided.

### ***Section 14 – Part of body removed before day on which section 3 comes into force***

32. Section 14 provides that part of a deceased person's body which is removed for the purposes of transplantation, research, education, training or audit before section 3 comes into force, other than during a post mortem or anatomical examination, and which is held immediately before that day for any of those purposes may be retained and continue to be used for any such purpose.

***Section 15 – Existing request by adult not acted on before commencement of sections 3 and 6.***

33. **Section 15** extends only to requests that have been made by an adult that part of their body be used after their death for transplantation but which have not yet been acted upon at the time sections 3 and 6 come into force. Subsection (1) provides that where such a request is in force, either in writing or expressed verbally by the adult, the request is to be treated for the purposes of Part 1 as if it were authorisation by the adult in accordance with section 6(1), either in writing or, as the case may be, expressed verbally. Subsection (2) provides that a request “in writing” for the purposes of subsection (1) includes representation of a character in visible form. The effect of this provision is that existing on-line registration by an adult on the NHS Organ Donor Register, whether given verbally (over the telephone) or in writing, can be treated as if it were authorisation in accordance with section 6. Existing requests made via Organ Donor cards or other methods of tick box requests will also come within the scope of existing requests by an adult “in writing” for the purposes of this section.

***Section 16 – Offences: removal or use of part of body of deceased person for transplantation, research, etc***

34. **Section 16(1)(a)** provides that it is an offence to remove a part of the body of a deceased person for the purposes of transplantation, research, education, training or audit after the day on which section 3 comes into force, or to use after that day any part so removed for any such purpose, without having the necessary authorisation in accordance with section 6, 7, 8, 9 or 10.
35. Paragraph (b) of subsection (1) provides that it is an offence if such removal or use is undertaken by someone who is not either a registered medical practitioner, or a person authorised to undertake such a removal in terms of regulations under section 11(1), or if the person undertaking the removal has not satisfied himself that life is extinct in terms of section 11(4)(a).
36. Subsection (2) provides that it is a defence for a person charged with an offence under subsection (1) to show that at the time of carrying out the activity, the person reasonably believed that the removal and use had been authorised in accordance with the relevant section of the Act or that the requirements of section 11(1) or (4) (a) or (c) had been satisfied as respects the part of the body (requirements as to who may carry out the removal or authorise it and as to being satisfied that the body is a dead body).
37. Subsection (3) sets out the penalties attaching to an offence under section 16(1). It provides that a person guilty of an offence under subsection (1) will be liable on summary conviction to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or both. On conviction on indictment, that person will be liable to imprisonment for a term not exceeding 3 years, to a fine, or both.

***Section 17 – Restrictions on transplants involving live donor***

38. This section broadly carries forward the arrangements at present under section 2 of the **Human Organ Transplants Act 1989 (c.31)**, which set up a system of scrutiny of transplantation of organs from living donors. The new provisions, which equate to section 33 of the **Human Tissue Act 2004 (c.30)**, will apply not just to whole organs but also to parts of organs, to take account of developments such as the possibility of transplanting parts of the liver of a live donor. The system of scrutiny will also be extended to cover all transplants from living donors, whether they are related or unrelated. A child, or an adult with incapacity cannot be a living donor of an organ or part of an organ except in the context of a domino transplant operation and cannot be a living donor of any tissue other than regenerative tissue.
39. **Section 17(1)(a)** makes it an offence, subject to subsections (3), (4), (5) and (8) to remove an organ, part of an organ or tissue from a living child with the intention that

it be used for transplantation. (“Adult” means a person 16 years of age or over and “child” means a person under the age of 16 – section 60(1).) Section 17(1)(b) makes it an offence, subject to subsections (3), (4), (5) and (8) to remove an organ or part of an organ from a living adult with the intention that it be used for transplantation. Section 17(1)(c) makes it an offence, subject to subsections (3), (4), (5) and (8) to remove any tissue from a living adult with incapacity with the intention that it be used for transplantation. In each case, the offence is committed where the person who carries out the removal knows, or might reasonably be expected to know that the removal is made from a living child, a living adult or, as the case may be, a living adult with incapacity.

40. Section 17(2)(a) makes it an offence, subject to the provisions of subsections (3), (4), (5) and (8), to use for transplantation, an organ or part of an organ or any tissue which has come from the body of a living child. Section 17(2)(b) makes it an offence, subject to subsections (3), (4), (5) and (8) to use for transplantation an organ or part of an organ from a living adult. Section 15(2)(c) makes it an offence, subject to subsections (3), (4), (5) and (8) to use for transplantation any tissue from a living adult with incapacity. Again the offence is committed if when the person does so he or she knows, or might reasonably be expected to know, that the organ, part of the organ or tissue has come from a living child, a living adult or, as the case may be, a living adult with incapacity.
41. Subsection (3) gives the Scottish Ministers power by regulations to provide that no offence is committed under subsection (1)(b) (in relation to removal of an organ or part of an organ from the body of a living adult intending that it be used for transplantation) or under subsection (2)(b) (in relation to using for transplantation an organ or part of an organ which has come from the body of a living adult) where the requirements mentioned in subsection (3) are met. The requirements are that the Scottish Ministers must be satisfied that no reward has been or will be given in contravention of the provisions of section 20 (prohibition of commercial dealings in parts of a human body for transplantation) and that such other conditions or requirements as may be specified in the regulations are complied with. Where regulations provide for such an exception from the offence provisions in subsection (1)(b) or (2)(b), it is sufficient if the person reasonably believes that the exception applies (subsection (8)).
42. Subsection (4) gives the Scottish Ministers power by regulations to provide that no offence is committed under subsection (1)(a) or (c) (in relation to removal of an organ, part of an organ or tissue from the body of a living child or the removal of any tissue from the body of a living adult with incapacity intending that it be used for transplantation) or that no offence is committed under subsection (2)(a) or (c) (in relation to using for transplantation an organ or part of an organ which has come from the body of a living adult or using for transplantation any tissue which has come from the body of a living adult with incapacity) where the requirements mentioned in subsection (4) are met. The requirements are that a person removes or uses regenerative tissue and that Scottish Ministers are satisfied that no reward has been or will be given in contravention of the provisions of section 20 and that such other conditions or requirements as may be specified in the regulations are complied with. Again, where regulations provide for such an exception from the offence provisions in subsections (1)(a) or (c) or (2)(a) or (c), it is sufficient if the person reasonably believes that the exception applies (subsection (8)).
43. Subsection (5) gives the Scottish Ministers power by regulations to provide that no offence is committed under subsection (1)(a) or (b) (in relation to removal of an organ, part of an organ or tissue from the body of a living child or the removal of an organ or part of an organ from the body of a living adult intending that it be used for transplantation) or that no offence is committed under subsection (2)(a) or (b) (in relation to using for transplantation an organ, part of an organ or any tissue which has come from the body of a living child or using for transplantation an organ or part of an organ which has come from the body of a living adult with incapacity) where the requirements mentioned in subsection (5) are met. The requirements are that a person removes from a child or an adult with incapacity an organ or part of an organ

during a domino organ transplant operation which is in turn intended to be used for transplantation in respect of another living person, or uses an organ or part of an organ so removed, that Scottish Ministers are satisfied that no reward has been or will be given in contravention of the provisions of section 20 and that such other conditions or requirements as may be specified in the regulations are complied with. Again, where regulations provide for such an exception from the offence provisions in subsection (1) (a) or (b) or (2)(a) or (b), it is sufficient if the person reasonably believes that the exception applies (subsection (8)).

44. Subsection (4) provides that in making regulations under subsection (3), (4) and (5) the Scottish Ministers must include a provision allowing for appeals against decisions relating to matters dealt with by the regulations.
45. “Adult with incapacity” for the purposes of subsections (1)(c) and (2)(c), is defined in subsection (7) as an adult to whom section 17 applies and, for the purposes of the provisions dealing with domino organ transplant operations, an adult who has been assessed as incapable under section 47 of the Adults with Incapacity (Scotland) Act 2000. “Domino organ transplant operation” is defined to ensure that the transplant operation must firstly be for the benefit of the child or adult with incapacity as the primary focus.
46. “Regenerative tissue” is defined in subsection (10) as tissue which, after injury or removal, is replaced by the body of the living person by natural processes. “Reward” is defined in subsection (10) as any description of financial or other material advantage, but excluding certain types of payment in money or money’s worth. One type of payment excluded is payment for defraying or reimbursing any liability incurred by a third party in relation to removing, transporting, preparing, preserving or storing the organ, organ part or tissue for transplantation. This is particularly important in the context of bone marrow transplantation where there are registries which charge a fee for expenses associated with the procurement of bone marrow internationally.
47. Subsection (9) sets out the penalties attaching to an offence under section 15. It provides that a person guilty of an offence under this section will be liable on summary conviction to imprisonment for a term not exceeding 12 months, to a fine not exceeding level 5 on the standard scale, or both.

### ***Section 18 – Meaning of adult with incapacity for purposes of section 17(1)(c) and (2)(c)***

48. Subsection (1) provides that for the purposes of section 17(1)(c) and (2)(c), an adult with incapacity is an adult who is incapable in relation to a decision about the removal from the adult of regenerative tissue for the purposes of transplantation. In addition, Scottish Ministers must have issued a certificate in accordance with subsection (2) that they are of this opinion. Subsection (2) provides that such a certificate must specify the period during which it is in force, which can be a period of up to one year from the date of the certificate. Subsection (3) provides that “incapable” in this section has the same meaning as it has in section 1(6) of the Adults With Incapacity (Scotland) Act 2000.

### ***Section 19 – Records, information etc.: removal and use of parts of human bodies for transplantation etc.***

49. This section carries forward the provisions of section 3 of the [Human Organ Transplants Act 1989 \(c.31\)](#), and parallels the provisions of section 34 of the [Human Tissue Act 2004 \(c.30\)](#).
50. Subsection (1) allows the Scottish Ministers to make regulations requiring the maintenance of records in connection with the removal of body parts for transplantation purposes and the use or retention for any of the other purposes referred to in section 3(1), of parts removed from the bodies of living or deceased persons. It also allows Scottish



*These notes relate to the Human Tissue (Scotland) Act 2006  
(asp 4) which received Royal Assent on 16 March 2006*

Ministers to make regulations for the provision of information to the Scottish Ministers, or such authority as may be specified in the regulations, with respect to such matters.

51. Under subsection (2), the Scottish Ministers must keep a record of the information provided to them in terms of regulations made under subsection (1).
52. Under subsection (3), any authority specified in the regulations must keep a record of the information provided to it in pursuance of the regulations.
53. Subsection (4) provides that failure to comply with regulations under subsection (1) without reasonable excuse, or knowingly or recklessly supplying false or misleading information, is an offence.
54. Subsection (5) sets out the penalties attaching to an offence under subsections 16(4) (a) or (b). It provides that a person guilty of an offence under subsection (4)(a) will be liable on summary conviction to a fine not exceeding level 3 on the standard scale, and that a person guilty of an offence under subsection (4)(b) will be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

***Section 20 – Prohibition of commercial dealings in parts of a human body for transplantation***

55. This section broadly carries forward the provisions currently in section 1 of the [Human Organ Transplants Act 1989 \(c.31\)](#), and parallels the provisions of section 32 of the [Human Tissue Act 2004 \(c.30\)](#).
56. Subsection (1) provides that a person commits an offence if the person gives or receives a reward for the supply of, or for an offer to supply, any part of a human body for transplantation. It is also an offence to seek to find a person willing to supply for transplantation any part of a human body for reward, or to offer to supply any part of a human body for transplantation for reward, or to initiate or negotiate an arrangement involving the giving of a reward for the supply of, or for an offer to supply, any part of a human body for transplantation. It is also an offence to take part in the management or control of a body corporate or group of people whose activities consist of or include the initiation or negotiation of such arrangements.
57. Subsection (2) provides that it is also an offence if a person publishes or distributes an advert inviting people to supply, or offers to supply, any part of a human body for transplantation for reward. Similarly, this subsection also makes it an offence to indicate in an advertisement that the advertiser is willing to initiate or negotiate an arrangement involving the giving of a reward for the supply of, or an offer to supply, any part of a human body for transplantation, as set out in subsection (1)(d).
58. Subsection (3) allows the Scottish Ministers to exempt certain persons from the offence provisions by designating them as being able lawfully to engage in activities under sections (1) and (2). This is intended to preserve the existing position under which certain organisations, such as the registries mentioned in paragraph 47, assist with obtaining tissue for transplantation in particular on a not-for-profit basis.
59. Subsection (4) sets out the penalties attaching to an offence under section 20(1). It provides that a person guilty of an offence under subsection (1) will be liable on summary conviction to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or both. On conviction on indictment, that person will be liable to imprisonment for a term not exceeding 3 years, to a fine, or both. Subsection (5) sets out the penalties attaching to an offence under sections 20(2). It provides that a person guilty of an offence under subsection (2) will be liable on summary conviction to imprisonment for a term not exceeding 12 months, to a fine not exceeding level 5 on the standard scale, or both.
60. Subsection (6) provides definitions of the terms “advertisement” and “reward” used in section 20.

***Section 21 – Summary proceedings for offences under sections 17, 19(4) or 20(2)***

61. **Section 21** provides that the time bar on commencing summary proceedings in relation to any of the offences under sections 17, 19(4) or 20(2) comes into operation 6 months after evidence sufficient to justify proceedings comes to the Lord Advocate's knowledge.

**22 - Authorisation for transplantation to have priority**

62. The effect of section 22 is that authorisations under section 6(1) or 9(1) as respects removal and use of any part of a body to be used for transplantation which are in force immediately before a person's death, or any right of a person to authorise removal and use for transplantation of a part of a deceased person's body for transplantation under section 7(1), (2), (3), 11(1), (2), (3) or 12(1) take priority over authorisation, or the right to give authorisation, as respects the use of the body for a post mortem examination or requests by a person that their body be used for anatomical examination.