

**2006 No. 420**

**HUMAN TISSUE**

**The Human Tissue (Scotland) Act 2006 (Human Organ  
Transplants Act 1989 Transitional and Savings Provisions)  
Order 2006**

*Made* - - - - *8th August 2006*  
*Laid before the Scottish Parliament* *11th August 2006*  
*Coming into force* - - *1st September 2006*

The Scottish Ministers, in exercise of the powers conferred by section 58 of the Human Tissue (Scotland) Act 2006(a), and of all other powers enabling them in that behalf, hereby make the following Order:

**Citation, commencement and interpretation.**

1.—(1) This Order may be cited as the Human Tissue (Scotland) Act 2006 (Human Organ Transplants Act 1989 Transitional and Savings Provisions) Order 2006 and shall come into force on 1st September 2006.

(2) In this Order—

“the 1989 Act” means the Human Organ Transplants Act 1989(b); and

“the 2006 Act” means the Human Tissue (Scotland) Act 2006.

**Transplants involving a live donor between persons who are not genetically related**

2.—(1) This article applies where, before 1st September 2006—

(a) a registered medical practitioner has referred a case to the Unrelated Live Transplant Authority (“ULTRA”) in accordance with regulation 3 of the Human Organ Transplants (Unrelated Persons) Regulations 1989(c); and

(b) ULTRA has received that reference.

(2) Where this article applies, the provisions set out in paragraph (3) shall continue to have effect as if those provisions had not been repealed by the 2006 Act.

(3) The provisions referred to in paragraph (2) are—

(a) sections 2, 4 and 7 of the 1989 Act;

(b) the Human Organ Transplants (Unrelated Persons) Regulations 1989; and

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(a) 2006 asp 4.

(b) 1989 c.31; the Human Organ Transplants Act 1989 is repealed from 1st September 2006 by the Human Tissue (Scotland) Act 2006 (asp 4), schedule.

(c) S.I. 1989/2480.

(c) the Human Organ Transplants (Establishment of Relationship) Regulations 1998(a).

(4) Where this article applies, for regulation 3(1)(a) of the Human Organ Transplants (Unrelated Persons) Regulations 1989 substitute—

“(a) that no payment has been made, or is to be made, before 1st September 2006 in contravention of section 1 of the Act and on or after 1st September in contravention of section 20 of the Human Tissue (Scotland) Act 2006(b);”

(5) Where this article applies, section 17(1)(a) and (b) and (2)(a) and (b) of the 2006 Act (restrictions on transplants involving a living child or living adult) do not have effect.

### **Transplants involving a live donor between genetically related persons**

**3.**—(1) This article applies where—

- (a) an organ is proposed to be transplanted from a living person (“the donor”) to another person (“the recipient”);
- (b) the recipient is genetically related to the donor for the purposes of section 2 of the 1989 Act and the fact of the relationship has been established before 1st September 2006 by the means specified in the Human Organ Transplants (Establishment of Relationship) Regulations 1998; and
- (c) the organ is removed from the donor for transplant into the recipient before 1st March 2007.

(2) Where this article applies, section 17(1)(a) and (b) and (2)(a) and (b) of the 2006 Act do not have effect.

(3) In this article “organ” means any part of a human body consisting of a structured arrangement of tissues which, if wholly removed, cannot be replicated by the body.

*LEWIS MACDONALD*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
8th August 2006

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(a) S.I. 1998/1428.  
(b) 2006 asp 4.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes transitional and saving provision for the purposes, or in consequence of, the repeal of the Human Organ Transplants Act 1989 (“the 1989 Act”) by section 61 of, and the schedule to, the Human Tissue (Scotland) Act 2006 (“the 2006 Act”).

The repeal of the 1989 Act comes into force on 1st September 2006, which is when the 2006 Act comes into force by virtue of the Human Tissue (Scotland) Act 2006 (Commencement) Order 2006 (S.S.I. 2006/251).

This Order also comes into force on that date.

The 1989 Act, amongst other things, provided for certain restrictions on transplants between living persons who were not genetically related, except in cases provided for in the Human Organ Transplants (Unrelated Persons) Regulations 1989. The 1989 Act defined “genetically related” for that purpose and the Human Organ Transplants (Establishment of Relationship) Regulations 1998 specified the means by which the fact of that relationship was to be established. The 2006 Act repeals those provisions and, in their place, provides at section 17(1)(a) and (b) and (2)(a) and (b) for restrictions on transplants of organs removed from any living child or adult except in cases provided for by the Human Organ and Tissue Live Transplants (Scotland) Regulations 2006 (S.S.I. 2006/390).

Article 2 provides that where, in accordance with the Human Organ Transplants (Unrelated Persons) Regulations 1989 and before 1st September 2006, a registered medical practitioner has referred a proposed transplant of an organ between donors who are not genetically related to the Unrelated Live Transplants Regulatory Authority (“ULTRA”) and ULTRA have received that reference, then certain provisions of the 1989 Act and legislation made under that Act will continue to apply to that case. The restrictions in section 17(1)(a) and (b) and (2)(a) and (b) of the 2006 Act will not apply.

Article 3 provides that where a transplant of an organ between living persons is proposed, and it has been established before 1st September 2006 that in the particular case the donor and recipient are to be treated as genetically related for the purposes of the 1989 Act, then, provided the transplant is carried out before 1st March 2007, the restrictions in section 17(1)(a) and (b) and (2)(a) and (b) of the 2006 Act will not apply.

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