



# Human Tissue Act 2004

## 2004 CHAPTER 30

### PART 3

#### MISCELLANEOUS AND GENERAL

##### *General*

#### **48 Powers of inspection, entry, search and seizure**

Schedule 5 (which makes provision about powers of inspection, entry, search and seizure for the purposes of this Act) has effect.

#### **49 Offences by bodies corporate**

- (1) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—
  - (a) any director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,he (as well as the body corporate) commits the offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) Where an offence under this Act is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on the part of a partner, he (as well as the partnership) commits the offence and shall be liable to be proceeded against and punished accordingly.
- (4) In subsection (3), “partner” includes a person purporting to act as a partner.

## **50 Prosecutions**

No proceedings for an offence under section 5, 32 or 33 shall be instituted—

- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
- (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

## **51 Offences: Northern Ireland**

- (1) This Act has effect in relation to Northern Ireland with the modifications specified in subsections (2) and (3).
- (2) In sections 32(5)(a) and 33(6)(a), for “51 weeks” there is substituted “6 months”.
- (3) In section 32(4)(a)(i), for “12 months” there is substituted “6 months”.

## **52 Orders and regulations**

- (1) Any power to make orders or regulations under this Act includes power—
  - (a) to make different provision for different cases, and
  - (b) to make incidental, supplementary, consequential or transitional provision or savings.
- (2) Any power to make orders or regulations under this Act is exercisable by statutory instrument.
- (3) A statutory instrument containing an order or regulations under this Act, except sections 1(11), 6, 7(4), 10(9), 14(4), 16(5), 27(9), 33(3) and (7), 46(1) and 54(10) and paragraphs 6(2), 12(2) and 13 of Schedule 4, made by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) No order under section 1(11), 10(9), 14(4), 27(9) or 54(10) or paragraph 13 of Schedule 4, and no regulations under section 6, 7(4), 16(5), 33(3) or (7) or 46(1) or paragraph 6(2) or 12(2) of Schedule 4, shall be made unless a draft of the statutory instrument containing it, or them, has been laid before and approved by a resolution of each House of Parliament.
- (5) Subsections (1) and (2) do not apply to any power of a court.
- (6) Subsections (1) to (3) do not apply to orders under section 58 or 60.
- (7) The power under section 14(4) or 16(5)—
  - (a) so far as relating to museums in Wales, may only be exercised with the consent of the National Assembly for Wales, and
  - (b) so far as relating to museums in Northern Ireland, may only be exercised with the consent of the Department of Culture, Arts and Leisure.
- (8) The Secretary of State shall consult the National Assembly for Wales and the relevant Northern Ireland department before acting under any of the following provisions—
  - section 1(9)(a) and (11);
  - section 4(10)(b);
  - section 6;
  - section 7(4);

section 8(4)(d);  
section 10(9);  
section 14(4);  
section 16(3) and (5);  
section 27(9);  
section 33(3) and (7);  
section 34(1);  
section 46(1);  
section 54(10);  
paragraphs 6(2), 10(b), 12(2) and 13 of Schedule 4;  
paragraph 4(5) of Schedule 5.

(9) Before acting—

- (a) under section 54(10) in order to amend section 54(9) so far as having effect for the purposes of Schedule 4, or
- (b) under paragraph 6(2), 10(b), 12(2) or 13 of Schedule 4,  
the Secretary of State shall also consult the Scottish Ministers.

(10) Before acting under any of the following provisions, the Secretary of State shall also consult such other persons as he considers appropriate—

section 1(11);  
section 6;  
section 7(4);  
section 10(9);  
section 14(4);  
section 16(5);  
section 27(9);  
section 33(3) and (7);  
section 46(1);  
section 54(10);  
paragraphs 6(2), 12(2) and 13 of Schedule 4.

### **53 “Relevant material”**

- (1) In this Act, “relevant material” means material, other than gametes, which consists of or includes human cells.
- (2) In this Act, references to relevant material from a human body do not include—
  - (a) embryos outside the human body, or
  - (b) hair and nail from the body of a living person.

### **54 General interpretation**

(1) In this Act—

“adult” means a person who has attained the age of 18 years;  
“anatomical examination” means macroscopic examination by dissection for anatomical purposes;

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*Status: This is the original version (as it was originally enacted).*

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“anatomical purposes” means purposes of teaching or studying, or researching into, the gross structure of the human body;

“the Authority” has the meaning given by section 13(1);

“child”, except in the context of qualifying relationships, means a person who has not attained the age of 18 years;

“licence” means a licence under paragraph 1 of Schedule 3;

“licensed activity”, in relation to a licence, means the activity which the licence authorises to be carried on;

“parental responsibility”—

(a) in relation to England and Wales, has the same meaning as in the Children Act 1989 (c. 41), and

(b) in relation to Northern Ireland, has the same meaning as in the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));

“relevant Northern Ireland department” means the Department of Health, Social Services and Public Safety.

(2) In this Act—

(a) references to material from the body of a living person are to material from the body of a person alive at the point of separation, and

(b) references to material from the body of a deceased person are to material from the body of a person not alive at the point of separation.

(3) In this Act, references to transplantation are to transplantation to a human body and include transfusion.

(4) In this Act, references to decent disposal include, in relation to disposal of material which has come from a human body, disposal as waste.

(5) In this Act, references to public display, in relation to the body of a deceased person, do not include—

(a) display for the purpose of enabling people to pay their final respects to the deceased, or

(b) display which is incidental to the deceased’s funeral.

(6) Subsections (1) and (4) of section 1 of the Human Fertilisation and Embryology Act 1990 (c. 37) (definitions of “embryo” and “gametes”) have effect for the purposes of this Act as they have effect for the purposes of that Act (other than that section).

(7) For the purposes of this Act, material shall not be regarded as from a human body if it is created outside the human body.

(8) For the purposes of this Act, except section 49, a person is another’s partner if the two of them (whether of different sexes or the same sex) live as partners in an enduring family relationship.

(9) The following are qualifying relationships for the purposes of this Act, spouse, partner, parent, child, brother, sister, grandparent, grandchild, child of a brother or sister, stepfather, stepmother, half-brother, half-sister and friend of long standing.

(10) The Secretary of State may by order amend subsection (9).

## **55 Financial provisions**

There shall be paid out of money provided by Parliament—

- (a) any expenditure incurred by the Secretary of State in consequence of this Act, and
- (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

## **56 Consequential amendments**

Schedule 6 (consequential amendments) has effect.

## **57 Repeals and revocations**

The enactments and instruments specified in Schedule 7 are hereby repealed or revoked to the extent specified.

## **58 Transition**

- (1) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in section 32(4)(a)(i) to 12 months is to be read as a reference to 6 months.
- (2) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in each of sections 32(5)(a) and 33(6)(a) to 51 weeks is to be read as a reference to 6 months.
- (3) The Secretary of State may by order made by statutory instrument make in connection with the coming into force of any provision of this Act such transitional provision or savings as he considers necessary or expedient.
- (4) The power under subsection (3) includes power to make different provision for different cases.
- (5) Before making provision under subsection (3) in connection with the coming into force in England and Wales of any provision of this Act, except section 47, the Secretary of State shall consult the National Assembly for Wales.
- (6) Before making provision under subsection (3) in connection with the coming into force in Northern Ireland of any provision of this Act, except section 47, the Secretary of State shall consult the relevant Northern Ireland department.
- (7) Before making provision under subsection (3) in connection with the coming into force in Scotland of any provision of this Act, except section 47, the Secretary of State shall consult the Scottish Ministers.

## **59 Extent**

- (1) Subject to the following provisions, this Act extends to England and Wales and Northern Ireland only.
- (2) Sections 58(1), (2) and (5) and 60(3) extend to England and Wales only.
- (3) Sections 51(1) to (3), 58(6) and 60(4) extend to Northern Ireland only.

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- (4) The following provisions also extend to Scotland—
- (a) sections 45(1) to (3) and (5) and 47,
  - (b) section 49 so far as having effect for the purposes of section 45,
  - (c) section 52 so far as relating to orders under section 54(10) or paragraph 13 of Schedule 4 or regulations under paragraph 6(2) or 12(2) of that Schedule,
  - (d) section 54(2)(a), (3), (8) and (9) so far as having effect for the purposes of Schedule 4,
  - (e) section 54(6) and (7) so far as having effect for the purposes of section 45 or Schedule 4,
  - (f) sections 54(10) and 58(3) and (4), this section and sections 60(1) and (2) and 61, and
  - (g) Schedule 4, except paragraphs 3 and 9(2) to (5), and section 45(4) so far as relating thereto.
- (5) The following provisions extend to Scotland only—
- (a) sections 58(7) and 60(5),
  - (b) paragraphs 3 and 9(4) and (5) of Schedule 4, and section 45(4) so far as relating thereto, and
  - (c) paragraphs 2 and 4 of Schedule 6, and section 56 so far as relating thereto.
- (6) Subject to subsection (5), any amendment made by this Act has the same extent as the enactment to which it relates.
- (7) Subject to subsection (8), any repeal or revocation made by this Act has the same extent as the enactment or instrument to which it relates.
- (8) Except as provided by subsection (9), the repeals of the following do not extend to Scotland—
- (a) the Human Tissue Act 1961 (c. 54),
  - (b) the Anatomy Act 1984 (c. 14),
  - (c) the Corneal Tissue Act 1986 (c. 18), and
  - (d) the Human Organ Transplants Act 1989 (c. 31).
- (9) The repeals of the following provisions do extend to Scotland—
- (a) in section 1(4A)(b) of the Human Tissue Act 1961, the words “, Primary Care Trust”;
  - (b) in section 1(10) of that Act—
    - (i) paragraph (a) of the definition of “health authority”,
    - (ii) in the definition of “NHS trust”, the words “the National Health Service and Community Care Act 1990 or”, and
    - (iii) the words after the definition of that expression;
  - (c) section 4(5) of the Anatomy Act 1984;
  - (d) in the Human Organ Transplants Act 1989—
    - (i) in section 1, the words “in Great Britain”, in the first and third places where they occur,
    - (ii) in sections 2 and 3, the words “in Great Britain”, in each place, and
    - (iii) sections 5 and 6.

## **60 Commencement**

- (1) The following provisions shall come into force on the day on which this Act is passed—
  - this section, and
  - sections 58(3) to (7), 59 and 61.
- (2) The remaining provisions of this Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be so appointed for different purposes.
- (3) Before exercising the power under subsection (2) in relation to the coming into force in England and Wales of any provision of this Act, except section 47, the Secretary of State shall consult the National Assembly for Wales.
- (4) Before exercising the power under subsection (2) in relation to the coming into force in Northern Ireland of any provision of this Act, except section 47, the Secretary of State shall consult the relevant Northern Ireland department.
- (5) Before exercising the power under subsection (2) in relation to the coming into force in Scotland of any provision of this Act, except section 47, the Secretary of State shall consult the Scottish Ministers.
- (6) No day may be appointed under subsection (2) for the coming into force of section 5 or 8 which is earlier than the end of the period of three months beginning with the day on which the Authority first issues a code of practice dealing with the matters mentioned in section 26(2)(h) and (i).
- (7) If the Authority first issues a code of practice dealing with one of the matters mentioned in subsection (6) before it first issues a code of practice dealing with the other, that subsection shall have effect as if the three month period were one beginning with the later of—
  - (a) the day on which the Authority first issues a code of practice dealing with the matter mentioned in section 26(2)(h), and
  - (b) the day on which the Authority first issues a code of practice dealing with the matter mentioned in section 26(2)(i).

## **61 Short title**

This Act may be cited as the Human Tissue Act 2004.