



Human Tissue Act 2004

2004 CHAPTER 30

PART 3

MISCELLANEOUS AND GENERAL

Miscellaneous

42 Power of Human Tissue Authority to assist other public authorities

- (1) The Authority may if it thinks it appropriate to do so provide assistance to any other public authority in the United Kingdom for the purpose of the exercise by that authority of its functions.
- (2) Assistance provided by the Authority under this section may be provided on such terms, including terms as to payment, as it thinks fit.

43 Preservation for transplantation

- (1) Where part of a body lying in a hospital, nursing home or other institution is or may be suitable for use for transplantation, it shall be lawful for the person having the control and management of the institution—
 - (a) to take steps for the purpose of preserving the part for use for transplantation, and
 - (b) to retain the body for that purpose.
- (2) Authority under subsection (1)(a) shall only extend—
 - (a) to the taking of the minimum steps necessary for the purpose mentioned in that provision, and
 - (b) to the use of the least invasive procedure.
- (3) Authority under subsection (1) ceases to apply once it has been established that consent making removal of the part for transplantation lawful has not been, and will not be, given.

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- (4) Authority under subsection (1) shall extend to any person authorised to act under the authority by—
 - (a) the person on whom the authority is conferred by that subsection, or
 - (b) a person authorised under this subsection to act under the authority.
- (5) An activity done with authority under subsection (1) shall be treated—
 - (a) for the purposes of Part 1, as not being an activity to which section 1(1) applies;
 - (b) for the purposes of Part 2, as not being an activity to which section 16 applies.
- (6) In this section, “body” means the body of a deceased person.

44 Surplus tissue

- (1) It shall be lawful for material to which subsection (2) or (3) applies to be dealt with as waste.
- (2) This subsection applies to any material which consists of or includes human cells and which has come from a person’s body in the course of his—
 - (a) receiving medical treatment,
 - (b) undergoing diagnostic testing, or
 - (c) participating in research.
- (3) This subsection applies to any relevant material which—
 - (a) has come from a human body, and
 - (b) ceases to be used, or stored for use, for a purpose specified in Schedule 1.
- (4) This section shall not be read as making unlawful anything which is lawful apart from this section.

45 Non-consensual analysis of DNA

- (1) A person commits an offence if—
 - (a) he has any bodily material intending—
 - (i) that any human DNA in the material be analysed without qualifying consent, and
 - (ii) that the results of the analysis be used otherwise than for an excepted purpose,
 - (b) the material is not of a kind excepted under subsection (2), and
 - (c) he does not reasonably believe the material to be of a kind so excepted.
- (2) Bodily material is excepted if—
 - (a) it is material which has come from the body of a person who died before the day on which this section comes into force and at least one hundred years have elapsed since the date of the person’s death,
 - (b) it is an existing holding and the person who has it is not in possession, and not likely to come into possession, of information from which the individual from whose body the material has come can be identified, or
 - (c) it is an embryo outside the human body.
- (3) A person guilty of an offence under this section—

- (a) is liable on summary conviction to a fine not exceeding the statutory maximum;
 - (b) is liable on conviction on indictment—
 - (i) to imprisonment for a term not exceeding 3 years, or
 - (ii) to a fine, or
 - (iii) to both.
- (4) Schedule 4 (which makes provision for the interpretation of “qualifying consent” and “use for an excepted purpose” in subsection (1)(a)) has effect.
- (5) In this section (and Schedule 4)—
- “bodily material” means material which—
 - (a) has come from a human body, and
 - (b) consists of or includes human cells;
 - “existing holding” means bodily material held immediately before the day on which this section comes into force.

46 Power to give effect to Community obligations

- (1) The Secretary of State may by regulations amend this Act—
- (a) for the purpose of implementing a relevant obligation or enabling a relevant obligation to be implemented, or
 - (b) for the purpose of dealing with matters arising out of or related to a relevant obligation.
- (2) The power under subsection (1)—
- (a) includes (in particular) power to add or omit provisions, and
 - (b) includes power consequentially to amend or repeal any other enactment and any instrument made under an enactment.
- (3) In this section, “relevant obligation” means a Community obligation of the United Kingdom relating to material which consists of, includes or is derived from human cells.

47 Power to de-accession human remains

- (1) This section applies to the following bodies—
- The Board of Trustees of the Armouries
 - The Trustees of the British Museum
 - The Trustees of the Imperial War Museum
 - The Board of Governors of the Museum of London
 - The Trustees of the National Maritime Museum
 - The Board of Trustees of the National Museums and Galleries on Merseyside
 - The Trustees of the Natural History Museum
 - The Board of Trustees of the Science Museum
 - The Board of Trustees of the Victoria and Albert Museum.
- (2) Any body to which this section applies may transfer from their collection any human remains which they reasonably believe to be remains of a person who died less than one thousand years before the day on which this section comes into force if it appears

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to them to be appropriate to do so for any reason, whether or not relating to their other functions.

- (3) If, in relation to any human remains in their collection, it appears to a body to which this section applies—
- (a) that the human remains are mixed or bound up with something other than human remains, and
 - (b) that it is undesirable, or impracticable, to separate them,
- the power conferred by subsection (2) includes power to transfer the thing with which the human remains are mixed or bound up.
- (4) The power conferred by subsection (2) does not affect any trust or condition subject to which a body to which this section applies holds anything in relation to which the power is exercisable.
- (5) The power conferred by subsection (2) is an additional power.

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);

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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;
 “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.
- (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,

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- (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.

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- (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.