

**2005 No. 2792 (C.115)**

**HUMAN TISSUE**

**The Human Tissue Act 2004 (Commencement No.3 and  
Transitional Provisions) Order 2005**

*Made* - - - -

*10th October 2005*

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 58(3) and 60(2) of the Human Tissue Act 2004(a).

In accordance with section 60(3) to (5) of that Act, she has consulted the National Assembly for Wales, the relevant Northern Ireland Department(b) and the Scottish Ministers before exercising those powers.

**Citation and interpretation**

1. This Order may be cited as the Human Tissue Act 2004 (Commencement No.3 and Transitional Provisions) Order 2005 and references to the Act are to the Human Tissue Act 2004.

**Appointed day**

2.—(1) The provisions of the Act set out in paragraph (2) come into force on 20 October 2005 to the extent specified in that paragraph.

(2) The provisions coming into force on 20 October 2005 are—

- (a) section 32 (prohibition of commercial dealings in human material for transplantation);
- (b) section 51 (offences: Northern Ireland), except the modification made to section 33(6)(a) by section 51(2);
- (c) section 52 (orders and regulations), so far as relevant to the other provisions which this Order brings into force;
- (d) section 54 (general interpretation), so far as relevant to the other provisions which this Order brings into force;
- (e) section 56 (consequential amendments), so far as it brings into effect paragraphs 4 and 7 of Schedule 6 and subject to Article 3(1)(a) of this Order;
- (f) section 57 (repeals and revocations) and Part 1 of Schedule 7 (repeals), to the extent that they repeal—
  - (i) section 1 of the Human Organ Transplants Act 1989(c) (prohibition of commercial dealings in human organs), and

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(a) 2004 c.30.

(b) See section 54(1), which defines “relevant Northern Ireland department” as the Department of Health, Social Services and Public Safety.

(c) 1989 c.31.

- (ii) the reference to that section in section 5 of that Act (prosecutions);
- (g) section 57 and Part 2 of Schedule 7 (revocations), to the extent that they revoke—
  - (i) Article 3 of the Human Organ Transplants (Northern Ireland) Order 1989(a) (prohibition of commercial dealings in human organs), and
  - (ii) the reference to that Article in Article 6 of that Order (prosecutions);
- (h) paragraph 4 of Schedule 6 to the Act (consequential amendments: Human Organ Transplants Act 1989);
- (i) paragraph 7 of Schedule 6 to the Act (consequential amendments: Asylum and Immigration (Treatment of Claimants Etc.) Act 2004(b)), subject to Article 3(1)(a) of this Order;
- (j) the remaining provisions of the Act, so far as not already in force, for the purpose only of conferring power to make orders and regulations.

### **Transitional provisions**

**3.—(1)** Until section 33 of the Act (restriction on transplants involving a live donor) comes fully into force—

- (a) in section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation), the reference to sections 32 and 33 of the Act shall be read as a reference to section 32 of the Act and to the Human Organ Transplants (Northern Ireland) Order 1989;
- (b) in section 2(3) of the Human Organ Transplants Act 1989 (restrictions on transplants between persons who are not genetically related), the reference to section 1 of that Act shall be read as a reference to section 1 of that Act and to section 32 of the Act;
- (c) in regulation 3(1)(a) of the Human Organ Transplants (Unrelated Persons) Regulations 1989(c) (transplants between persons who are not genetically related), the reference to section 1 of the Human Organ Transplants Act 1989 shall be read a reference to section 1 of the Human Organ Transplants Act 1989 and to section 32 of the Act;
- (d) in Article 4(3) of the Human Organ Transplants (Northern Ireland) Order 1989 (restriction on transplants between persons not genetically related), the reference to Article 3 of that Order shall be read as a reference to section 32 of the Act;
- (e) in regulation 2(1)(a) of the Human Organ Transplants (Unrelated Persons) Regulations (Northern Ireland) 1990(d) (transplants between persons who are not genetically related), the reference to Article 3 of the Human Organ Transplants (Northern Ireland) Order 1989 shall be read as a reference to section 32 of the Act.

Signed by authority of the Secretary of State for Health

*Rosie Winterton*  
Minister of State,  
Department of Health

10th October 2005

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(a) S.I. 1989/2408 (N.I. 21).  
 (b) 2004 c.19.  
 (c) S.I. 1989/2480.  
 (d) S.R. 1990/357.

## EXPLANATORY NOTE

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

This Order is the third Commencement Order made under the Human Tissue Act 2004 (c.30) (“the Act”).

Article 2 brings into force on 20 October 2005 the following provisions of the Act—

- section 32 (prohibition of commercial dealings in human material for transplantation);
- section 51 (offences: Northern Ireland), except the modification of section 33(6)(a), since section 33 is not brought into force by this Order;
- section 52 (orders and regulations) and section 54 (general interpretation), so far as relevant to the other provisions brought into force by this Order;
- section 56 (consequential amendments), to the extent that it brings into effect paragraphs 4 and 7 of Schedule 6 and subject to Article 3(1)(a);
- section 57 and Part 1 of Schedule 7 (repeals), to the extent only of repealing section 1 of the 1989 Act and the reference to that section in section 5 of that Act;
- section 57 and Part 2 of Schedule 7 (revocations), to the extent only of revoking Article 3 of the Human Organ Transplants (Northern Ireland) Order 1989 (“the Northern Ireland Order”), and the reference to that Article in Article 6 of that Order;
- paragraph 4 of Schedule 6 (consequential amendments: Human Organ Transplants Act 1989 (c.31) (“the 1989 Act”));
- paragraph 7 of Schedule 6 (consequential amendments: Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) (“the Asylum and Immigration Act”), subject to the transitional provision set out in Article 3(1)(a); and
- the remaining provisions of the Act, so far as not already in force, for the purpose only of conferring power to make orders and regulations.

Article 3 makes transitional provision to deal with the fact that section 33 of the Act (restrictions on transplants involving a live donor) is not yet in force so parts of the 1989 Act and the Northern Ireland Order remain in force in England and Wales and Northern Ireland. Article 3(1)(a) provides for the reference to the Northern Ireland Order to be retained in section 4 of the Asylum and Immigration Act. Article 3(1)(b) to (e) provide for legislative references to provisions of the 1989 Act and the Northern Ireland Order which are repealed or revoked by this Order to be read as references to section 32 of the Act.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

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

The following provisions of the Human Tissue Act have been brought into force as shown below, subject to transitional provision made by Article 2 of the Human Tissue Act (Commencement No.1) Order 2005 (S.I. 2005/919).

<i>Provision of the Act</i>	<i>Date of commencement</i>	<i>S.I. No</i>
sections 13 to 15	1 April 2005	S.I. 2005/919
sections 26 to 29	1 April 2005	S.I. 2005/919
sections 35 and 36	1 April 2005	S.I. 2005/919
section 38	1 April 2005	S.I. 2005/919
sections 39 to 41 (partially)	1 April 2005	S.I. 2005/919
section 42	1 April 2005	S.I. 2005/919
section 47	3 October 2005	S.I. 2005/2632
sections 52 to 54 (partially)	1 April 2005	S.I. 2005/919

section 55	1 April 2005	S.I. 2005/919
Schedules 1 and 2	1 April 2005	S.I. 2005/919
paragraph 6 of Schedule 6	1 April 2005	S.I. 2005/919

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