



# 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.

#### **Commencement Information**

**II** S. 42 in force at 1.4.2005 by S.I. 2005/919, art. 3, Sch. (with art. 2)

#### **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

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- (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.
- (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.

#### Commencement Information

**I2** S. 43 in force at 20.10.2005 for specified purposes by S.I. 2005/2792, art. 2(2)(j)

#### 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.

#### Commencement Information

**I3** S. 44 in force at 20.10.2005 for specified purposes by S.I. 2005/2792, art. 2(2)(j)

**I4** S. 44 in force at 1.3.2006 for specified purposes by S.I. 2006/404, art. 2(3)(4), Sch. (with arts. 4-6)

**I5** S. 44 in force at 7.4.2006 for specified purposes by S.I. 2006/404, art. 3(3), Sch. (with arts. 4-6)

**I6** S. 44 in force at 31.7.2006 for specified purposes by S.I. 2006/1997, art. 2, Sch. (with art. 4)

#### 45 Non-consensual analysis of DNA

- (1) A person commits an offence if—
  - (a) he has any bodily material intending—

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- (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.

#### **Commencement Information**

**I7** S. 45 in force at 20.10.2005 for specified purposes by S.I. 2005/2792, art. 2(2)(j)

## **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.

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- (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.

**Commencement Information**

**I8** S. 46 in force at 20.10.2005 for specified purposes by S.I. 2005/2792, art. 2(2)(j)

**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 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.

**Commencement Information**

**I9** S. 47 in force at 3.10.2005 by S.I. 2005/2632, art. 2

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