



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.
- [^{F1}(7) This section does not apply in relation to a part of a body lying in an institution in Wales.
(For provision in these circumstances see section 13 of the Human Transplantation (Wales) Act 2013).]

Textual Amendments

- F1** S. 43(7) inserted (E.W.) (1.12.2015) by [Human Transplantation \(Wales\) Act 2013 \(anaw 5\)](#), **ss. 16(7), 21(1)** (with [s. 14](#)); [S.I. 2015/1679](#), **art. 3(e)**

Commencement Information

- I2** S. 43 in force at 20.10.2005 for specified purposes by [S.I. 2005/2792](#), **art. 2(2)(j)**
- I3** S. 43 in force at 1.9.2006 in so far as not already in force by [S.I. 2006/1997](#), **art. 3(2)** (with [arts. 4, 7, 8](#))

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.

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Commencement Information

- I4** S. 44 in force at 20.10.2005 for specified purposes by S.I. 2005/2792, **art. 2(2)(j)**
- I5** 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)
- I6** S. 44 in force at 7.4.2006 for specified purposes by S.I. 2006/404, **art. 3(3), Sch.** (with arts. 4-6)
- I7** S. 44 in force at 31.7.2006 for specified purposes by S.I. 2006/1997, **art. 2, Sch.** (with art. 4)
- I8** S. 44 in force at 1.9.2006 in so far as not already in force by S.I. 2006/1997, **art. 3(2)** (with arts. 4, 7, 8)

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.

Commencement Information

- I9** S. 45 in force at 20.10.2005 for specified purposes by S.I. 2005/2792, **art. 2(2)(j)**

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110 S. 45 in force at 1.9.2006 in so far as not already in force by S.I. 2006/1997, **art. 3(2)** (with arts. 4, 7, 8)

F3 46 Power to give effect to [F2EU] obligations

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Textual Amendments

F2 Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3)4(2)6(4)6(5))

F3 S. 46 omitted (31.12.2020) by virtue of [The Human Tissue \(Quality and Safety for Human Application\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/481\)](#), regs. 1, **2(2)**; 2020 c. 1, Sch. 5 para. 1(1)

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.

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Commencement Information

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

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