



# Human Tissue Act 2004

## 2004 CHAPTER 30

### PART 2

#### REGULATION OF ACTIVITIES INVOLVING HUMAN TISSUE

##### *Trafficking*

### **32 Prohibition of commercial dealings in human material for transplantation**

- (1) A person commits an offence if he—
  - (a) gives or receives a reward for the supply of, or for an offer to supply, any controlled material;
  - (b) seeks to find a person willing to supply any controlled material for reward;
  - (c) offers to supply any controlled material for reward;
  - (d) initiates or negotiates any arrangement involving the giving of a reward for the supply of, or for an offer to supply, any controlled material;
  - (e) takes part in the management or control of a body of persons corporate or unincorporate whose activities consist of or include the initiation or negotiation of such arrangements.
- (2) Without prejudice to subsection (1)(b) and (c), a person commits an offence if he causes to be published or distributed, or knowingly publishes or distributes, an advertisement—
  - (a) inviting persons to supply, or offering to supply, any controlled material for reward, or
  - (b) indicating that the advertiser is willing to initiate or negotiate any such arrangement as is mentioned in subsection (1)(d).
- (3) A person who engages in an activity to which subsection (1) or (2) applies does not commit an offence under that subsection if he is designated by the Authority as a person who may lawfully engage in the activity.

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[<sup>F1</sup>(3A) The Authority may not designate a person under subsection (3) if doing so would be incompatible with the principles set out in—

- (a) Article 12 of [Directive 2004/23/EC](#) of the European Parliament and of the Council on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells, or
- (b) Article 13 of [Directive 2010/53/EU](#) of the European Parliament and of the Council on standards of quality and safety of human organs intended for transplantation,

and for the purposes of this subsection as it applies in relation to Great Britain, those Articles of those Directives are to be read subject to the modifications set out in subsections (3B) and (3C).]

[<sup>F2</sup>(3B) Article 12 of [Directive 2004/23/EC](#)<sup>F3</sup> is to be read as if—

- (a) in paragraph 1—
  - (i) for the first subparagraph there were substituted—
 

“Donations of tissues and cells shall be voluntary and unpaid.”;
  - (ii) in the second subparagraph, the second sentence were omitted;
  - (iii) the third subparagraph were omitted;
- (b) in paragraph 2, for the first subparagraph there were substituted—
 

“Any promotion and publicity activities in support of the donation of human tissues and cells shall comply with any directions of the Authority or any provision of any enactment which relates to such activities.”;
- (c) also in paragraph 2, in the second subparagraph—
  - (i) “Member States shall endeavour to ensure that” were omitted;
  - (ii) for “is” there were substituted “ shall be ”.

(3C) Article 13 of [Directive 2010/53/EU](#)<sup>F4</sup> is to be read as if—

- (a) in paragraph 1—
  - (i) “Member States shall ensure that” were omitted; and
  - (ii) for “are” there were substituted “ shall be ”.
- (b) in paragraph 2, the second sentence were omitted;
- (c) in paragraph 3—
  - (i) “Member States shall prohibit” were omitted; and
  - (ii) at the end there were inserted “shall be prohibited”;
- (d) in paragraph 4—
  - (i) “Member States shall ensure that” were omitted; and
  - (ii) for “is” there were substituted “ shall be ”.]

(4) A person guilty of an offence under subsection (1) shall be liable—

- (a) on summary conviction—
  - (i) to imprisonment for a term not exceeding [<sup>F5</sup>12 months][<sup>F5</sup>the general limit in a magistrates’ court], or
  - (ii) to a fine not exceeding the statutory maximum, or
  - (iii) to both;

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- (b) on conviction on indictment—
  - (i) to imprisonment for a term not exceeding 3 years, or
  - (ii) to a fine, or
  - (iii) to both.
- (5) A person guilty of an offence under subsection (2) shall be liable on summary conviction—
  - (a) to imprisonment for a term not exceeding 51 weeks, or
  - (b) to a fine not exceeding level 5 on the standard scale, or
  - (c) to both.
- (6) For the purposes of subsections (1) and (2), payment in money or money's worth to the holder of a licence shall be treated as not being a reward where—
  - (a) it is in consideration for transporting, removing, preparing, preserving or storing controlled material, and
  - (b) its receipt by the holder of the licence is not expressly prohibited by the terms of the licence.
- (7) References in subsections (1) and (2) to reward, in relation to the supply of any controlled material, do not include payment in money or money's worth for defraying or reimbursing—
  - (a) any expenses incurred in, or in connection with, transporting, removing, preparing, preserving or storing the material,
  - (b) any liability incurred in respect of—
    - (i) expenses incurred by a third party in, or in connection with, any of the activities mentioned in paragraph (a), or
    - (ii) a payment in relation to which subsection (6) has effect, or
  - (c) any expenses or loss of earnings incurred by the person from whose body the material comes so far as reasonably and directly attributable to his supplying the material from his body.
- (8) For the purposes of this section, controlled material is any material which—
  - (a) consists of or includes human cells,
  - (b) is, or is intended to be removed, from a human body,
  - (c) is intended to be used for the purpose of transplantation, and
  - (d) is not of a kind excepted under subsection (9).
- (9) The following kinds of material are excepted—
  - (a) gametes,
  - (b) embryos, and
  - (c) material which is the subject of property because of an application of human skill.
- (10) Where the body of a deceased person is intended to be used to provide material which—
  - (a) consists of or includes human cells, and
  - (b) is not of a kind excepted under subsection (9),for use for the purpose of transplantation, the body shall be treated as controlled material for the purposes of this section.
- (11) In this section—

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“ advertisement ” includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons;

“ reward ” means any description of financial or other material advantage.

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#### Textual Amendments

- F1** S. 32(3A) substituted (31.12.2020) by [The Quality and Safety of Organs Intended for Transplantation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/483\)](#), regs. 1, **2(2)** (as substituted by S.I. 2020/1305, regs. 1, **3**); 2020 c. 1, **Sch. 5 para. 1(1)**
  - F2** S. 32(3B)(3C) inserted (31.12.2020) by [The Quality and Safety of Organs Intended for Transplantation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/483\)](#), regs. 1, **2(3)**; 2020 c. 1, Sch. 5 para. 1(1)
  - F3** OJ No L 102, 07.04.2004, p48.
  - F4** OJ No L 207, 06.08.2010, p14.
  - F5** Words in s. 32(4)(a)(i) substituted (E.W.) (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates’ Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(1), **Sch. Pt. 1**
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#### Commencement Information

- I1** S. 32 in force at 20.10.2005 by [S.I. 2005/2792](#), **art. 2(2)(a)**

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 32(3A) words inserted by [S.I. 2019/483 reg. 2\(2\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S.I. 2019/483, reg. 2(2) substituted immediately before IP completion day by S.I 2020/1035, reg. 3)
- s. 32(3A) words substituted by [S.I. 2019/483 reg. 2\(2\)\(a\)](#) (This amendment not applied to legislation.gov.uk. S.I. 2019/483, reg. 2(2) substituted immediately before IP completion day by S.I 2020/1035, reg. 3)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 29(7) inserted by [2013 anaw 5 s. 15\(4\)\(e\)](#)
- s. 43(5A) inserted by [2009 c. 25 Sch. 21 para. 50](#)