



Human Tissue (Scotland) Act 2006

2006 asp 4

PART 1

TRANSPLANTATION ETC.

Restrictions on transplants involving live donor

17 Restrictions on transplants involving live donor

- (1) Subject to subsections (3) to (5) and (8), a person commits an offence—
- (a) if—
 - (i) the person removes an organ, part of an organ, or any tissue from the body of a living child intending that it be used for transplantation; and
 - (ii) when the person removes the organ, part or tissue, the person knows, or might reasonably be expected to know, that the other person from whose body the person removes it is a living child;
 - (b) if—
 - (i) the person removes an organ or part of an organ from the body of a living adult intending that it be used for transplantation; and
 - (ii) when the person removes the organ or part, the person knows, or might reasonably be expected to know, that the adult from whose body the person removes it is alive; or
 - (c) if—
 - (i) the person removes any tissue from the body of a living adult with incapacity intending that it be used for transplantation; and
 - (ii) when the person removes the tissue the person knows, or might reasonably be expected to know, that the adult from whose body the person removes it is alive and an adult with incapacity.
- (2) Subject to subsections (3) to (5) and (8), a person commits an offence—
- (a) if—
 - (i) the person uses for transplantation an organ, part of an organ or any tissue which has come from the body of a living child; and
 - (ii) when the person does so, the person knows, or might reasonably be expected to know, that it has come from the body of a living child;

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- (b) if—
 - (i) the person uses for transplantation an organ or part of an organ which has come from the body of a living adult; and
 - (ii) when the person does so, the person knows, or might reasonably be expected to know, that it has come from the body of a living adult; or
 - (c) if—
 - (i) the person uses for transplantation any tissue which has come from the body of a living adult with incapacity; and
 - (ii) when the person does so, the person knows, or might reasonably be expected to know, that it has come from the body of a living adult with incapacity.
- (3) The Scottish Ministers may by regulations provide that subsection (1)(b) or (2)(b) does not apply in a case where—
- (a) the Ministers are satisfied that—
 - (i) no reward has been or is to be given in contravention of section 20; and
 - (ii) such other conditions as may be specified in the regulations are satisfied; and
 - (b) such other requirements as may be specified in the regulations are complied with.
- (4) The Scottish Ministers may by regulations provide that subsection (1)(a) or (c) or (2) (a) or (c) does not apply in a case where—
- (a) a person—
 - (i) removes regenerative tissue; or
 - (ii) uses such tissue;
 - (b) the Ministers are satisfied that—
 - (i) no reward has been or is to be given in contravention of section 20;
 - (ii) such other conditions, as may be specified in the regulations are satisfied; and
 - (c) such other requirements as may be specified in the regulations are complied with.
- (5) The Scottish Ministers may by regulations provide that subsection (1)(a) or (b) or (2) (a) or (b) does not apply in a case where—
- (a) a person—
 - (i) removes an organ or part of an organ as described in subsection (6); or
 - (ii) uses such an organ or part so removed;
 - (b) the Ministers are satisfied that—
 - (i) no reward has been or is to be given in contravention of section 20;
 - (ii) such other conditions, as may be specified in the regulations are satisfied; and
 - (c) such other requirements as may be specified in the regulations are complied with.
- (6) The organ or part of an organ is one that—
- (a) during a domino organ transplant operation, is necessarily removed from—
 - (i) a child; or
 - (ii) an adult with incapacity; and

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- (b) is in turn intended to be used for transplantation in respect of another living person.
- (7) Regulations under subsection (3), (4) or (5) must include provision as to appeals against decisions made in relation to matters which fall to be decided under the regulations.
- (8) Where under—
- (a) subsection (3) an exception from subsection (1)(b) or (2)(b) is in force, a person does not commit an offence under subsection (1)(b) or, as the case may be, (2)(b) if the person reasonably believes that the exception applies;
 - (b) subsection (4) an exception from subsection (1)(a) or (c) or (2)(a) or (c) is in force, a person does not commit an offence under subsection (1)(a) or (c) or (2)(a) or (c), as the case may be, if the person reasonably believes that the exception applies;
 - (c) subsection (5) an exception from subsection (1)(a) or (b) or (2)(a) or (b) is in force, a person does not commit an offence under subsection (1)(a) or (b) or (2)(a) or (b), as the case may be, if the person reasonably believes that the exception applies.
- (9) A person guilty of an offence under this section is liable on summary conviction to—
- (a) imprisonment for a term not exceeding 12 months;
 - (b) a fine not exceeding level 5 on the standard scale; or
 - (c) both.
- (10) In this section—
- “adult with incapacity” is—
- (a) for the purposes of subsections (1)(c) and (2)(c), an adult to whom section 18 applies;
 - (b) for the purposes of subsection (6)(a)(ii), an adult in respect of whom section 47 of the Adults with Incapacity (Scotland) Act 2000 (asp 4) applies in relation to the domino organ transplant operation in question;
- “domino organ transplant operation” means a transplant operation performed on a living person by a registered medical practitioner—
- (a) which is designed to safeguard or promote the physical health of the person by transplanting organs or parts of organs into the person; and
 - (b) by so doing, necessitates the removal of an organ or part of an organ from the person which in turn is intended to be used for transplantation in respect of another living person;
- “regenerative tissue” means tissue which is able to be replaced in the body of a living person by natural processes if the tissue is injured or removed;
- “reward” means any description of financial or other material advantage, but does not include any payment in money or money's worth for defraying or reimbursing—
- (a) the cost of removing, transporting, preparing, preserving or storing the organ (or part) or tissue;
 - (b) any liability incurred in respect of expenses incurred by a third party in, or in connection with, any of the activities referred to in paragraph (a);
 - (c) any expenses or loss of earnings incurred by the person from whose body the organ (or part) or tissue comes so far as reasonably and directly attributable to the person's supplying it from the person's body.

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Modifications etc. (not altering text)

- C1** S. 17(1)(a)(b)(2)(a)(2)(b) excluded (1.9.2006 with application in accordance with art. 3(1)) by [Human Tissue \(Scotland\) Act 2006 \(Human Organ Transplants Act 1989 Transitional and Savings Provisions\) Order 2006 \(S.S.I. 2006/420\)](#), arts. 1(1), **3(2)**
- C2** S. 17(1)(a) excluded (1.9.2006) by [Human Organ and Tissue Live Transplants \(Scotland\) Regulations 2006 \(S.S.I. 2006/390\)](#), regs. 1(3), **5(1)**
- C3** S. 17(1)(a)(b)(2)(a)(2)(b) excluded (1.9.2006 with application in accordance with art. 2(1)) by [Human Tissue \(Scotland\) Act 2006 \(Human Organ Transplants Act 1989 Transitional and Savings Provisions\) Order 2006 \(S.S.I. 2006/420\)](#), arts. 1(1), **2(5)**
- C4** S. 17(1)(b) excluded (1.9.2006) by [Human Organ and Tissue Live Transplants \(Scotland\) Regulations 2006 \(S.S.I. 2006/390\)](#), regs. 1(3), **3(1)**
- C5** S. 17(1)(b) excluded (1.9.2006) by [Human Organ and Tissue Live Transplants \(Scotland\) Regulations 2006 \(S.S.I. 2006/390\)](#), regs. 1(3), **2(1)**
- C6** S. 17(1)(c) excluded (1.9.2006) by [Human Organ and Tissue Live Transplants \(Scotland\) Regulations 2006 \(S.S.I. 2006/390\)](#), regs. 1(3), **4(1)**
- C7** S. 17(2)(a) excluded (1.9.2006) by [Human Organ and Tissue Live Transplants \(Scotland\) Regulations 2006 \(S.S.I. 2006/390\)](#), regs. 1(3), **5(2)**
- C8** S. 17(2)(b) excluded (1.9.2006) by [Human Organ and Tissue Live Transplants \(Scotland\) Regulations 2006 \(S.S.I. 2006/390\)](#), regs. 1(3), **3(2)**
- C9** S. 17(2)(b) excluded (1.9.2006) by [Human Organ and Tissue Live Transplants \(Scotland\) Regulations 2006 \(S.S.I. 2006/390\)](#), regs. 1(3), **2(2)**
- C10** S. 17(2)(c) excluded (1.9.2006) by [Human Organ and Tissue Live Transplants \(Scotland\) Regulations 2006 \(S.S.I. 2006/390\)](#), regs. 1(3), **4(2)**

Commencement Information

- I1** S. 17(1) (2)(6)-(10) in force at 1.9.2006 by [S.S.I. 2006/251](#), **art. 3**
- I2** S. 17(3)-(5) in force at 12.5.2006 only for the purpose of enabling regulations to be made to come into force on or after 1st September 2006; and 1.9.2006 in so far as not already in force by [S.S.I. 2006/251](#), arts. 2, 3, **Sch.**

18 Meaning of adult with incapacity for purposes of section 17(1)(c) and (2)(c)

- (1) This section applies to an adult—
- (a) who, in the opinion of the Scottish Ministers, is an adult who is incapable in relation to a decision about the removal from the adult of regenerative tissue for transplantation; and
 - (b) in respect of whom a certificate has been issued by the Ministers in accordance with subsection (2) that they are of this opinion.
- (2) A certificate for the purposes of subsection (1) is to be in a form prescribed in regulations by the Scottish Ministers and is to specify the period during which the certificate is in force, being a period which—
- (a) the Scottish Ministers consider appropriate to the condition or circumstances of the adult; but
 - (b) does not exceed one year from the date of the certificate.
- (3) In this section, “incapable” has the same meaning as it has in section 1(6) of the Adults with Incapacity (Scotland) Act 2000.

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Commencement Information

- I3** S. 18(1)(3) in force at 1.9.2006 by [S.S.I. 2006/251](#), **art. 3**
- I4** S. 18(2) in force at 1.9.2006 in so far as not already in force by [S.S.I. 2006/251](#), **arts. 2, 3, Sch.**

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