

Draft Regulations laid before the Scottish Parliament under section 59(3)(ab) of the Human Tissue (Scotland) Act 2006 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

HUMAN TISSUE

**The Human Tissue (Excepted Body
Parts) (Scotland) Regulations 2020**

*Made - - - - 2020
Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 6D(5) and 59(1)(b) of the Human Tissue (Scotland) Act 2006⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 6D(6) of that Act they have consulted with such persons as they consider appropriate.

In accordance with section 59(3)(ab)⁽²⁾ of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Human Tissue (Excepted Body Parts) (Scotland) Regulations 2020 and come into force on the day on which section 7 of the Human Tissue (Authorisation) (Scotland) Act 2019⁽³⁾ comes into force for all purposes.

(2) In these regulations—

“blood vessel” means arteries, arterioles, capillaries, venules and veins,

“face” means the front part of the head, extending widthways to and including the ears, and extending lengthways from and including the forehead to the top of the laryngeal prominence, containing the chin, nose and mouth but excluding the eyes.

(1) [2006 asp 4](#). Section 6D was inserted by section 7(2) of the Human Tissue (Authorisation) (Scotland) Act [2019 asp 11](#) (“the 2019 Act”).

(2) Section 59(3)(ab) was inserted by section 7(3) of the 2019 Act. Section 59(3)(ab) has been modified by paragraph 5 of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010.

(3) [2019 asp 11](#).

Excepted body parts

2.—(1) Paragraphs (2) to (5) specify “excepted body parts” for the purposes of section 6D and 6G(4) of the Human Tissue (Scotland) Act 2006.

(2) Subject to paragraph (4), the whole or any part of the following is specified—

- (a) brain,
- (b) cervix,
- (c) clitoris,
- (d) face,
- (e) fallopian tube,
- (f) labia (labia minora),
- (g) ovary,
- (h) penis,
- (i) perineum,
- (j) placenta,
- (k) prostate,
- (l) spinal cord,
- (m) testicle,
- (n) trachea,
- (o) umbilical cord,
- (p) uterus,
- (q) vagina,
- (r) vulva (labia majora).

(3) Subject to paragraph (5), the whole of the following is specified—

- (a) finger,
- (b) foot,
- (c) forearm,
- (d) hand,
- (e) lower leg,
- (f) thigh,
- (g) toe,
- (h) upper arm.

(4) The whole or part of the trachea is not specified in so far as it is attached to a lung.

(5) The following is not specified in so far as it is disaggregated from any body part specified in paragraph (3)—

- (a) blood vessel,
- (b) bone,
- (c) muscle,
- (d) nervous tissue,
- (e) skin,

(4) Section 6G was inserted by section 10 of the 2019 Act which has not yet been commenced.

(f) tendon.

St Andrew's House
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Human Tissue (Scotland) Act 2006 (“the 2006 Act”). They specify which body parts are “excepted body parts” for the purposes of section 6D (deemed authorisation for transplantation: adult) and section 6G (excepted body parts: authorisation for transplantation by nearest relative) of the 2006 Act.

Section 6D of the 2006 Act makes provision for deemed authorisation by adults for the removal and use of a part of the adult’s body after the adult’s death for transplantation, in the absence of either express authorisation by the adult or an opt-out declaration by the adult. Deemed authorisation does not apply in relation to an “excepted body part”. Instead, section 6G of the 2006 Act provides for authorisation by the adult’s nearest relative for the removal and use of an excepted body part after the adult’s death for transplantation.

Regulation 1(1) provides that the Regulations will come into force on the day which section 7 of the Human Tissue (Authorisation) (Scotland) Act 2019 comes into force for all purposes. Regulation 1(2) explains the defined terms within the Regulations.

Regulation 2 specifies the excepted body parts for the purposes of section 6D and 6G of the 2006 Act. Paragraph (2) specifies that the whole or any part of certain listed body parts are excepted body parts, subject to the exception in paragraph (4), which provides that the whole or part of the trachea is not specified if it is connected to a lung. Paragraph (3) specifies that the whole of certain listed body parts are excepted body parts, subject to paragraph (5), which provides that certain material is not specified in so far as it is detached from any body part specified in paragraph (3).