

2006 No. 251 (C. 23)

HUMAN TISSUE

**The Human Tissue (Scotland) Act 2006 (Commencement) Order
2006**

Made - - - -

10th May 2006

The Scottish Ministers, in exercise of the powers conferred by section 62(2) and (3) of the Human Tissue (Scotland) Act 2005^(a) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Human Tissue (Scotland) Act 2006 (Commencement) Order 2006.

(2) In this Order “the Act” means the Human Tissue (Scotland) Act 2006.

Appointed days

2. The provisions of the Act specified in column 1 of the Schedule to this Order and the subject matter of which is described in column 2 of that Schedule shall come into force on 12th May 2006 but, where a particular purpose is specified in relation to any provision in column 3 of that Schedule, that provision shall come into force on that day only for that purpose.

3. All the provisions of the Act shall, in so far as not then in force, come into force on 1st September 2006.

LEWIS MACDONALD

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
10th May 2006

SCHEDULE

Article 2

PROVISIONS OF THE ACT COMING INTO FORCE ON 12TH MAY 2006

<i>Column 1</i> <i>Provision of the Act</i>	<i>Column 2</i> <i>Subject matter</i>	<i>Column 3</i> <i>Purpose</i>
Section 11(1)(b) and (2)	Removal of part of body of deceased person: further requirements	Only for the purpose of enabling regulations to be made to come into force on or after 1st September 2006
Section 17(3)-(5)	Restrictions on transplants involving live donor	Only for the purpose of enabling regulations to be made to come into force on or after 1st September 2006
Section 18(2)	Meaning of adult with incapacity for purposes of section 17(1)(c) and (2)(c)	Only for the purpose of enabling regulations to be made to come into force on or after 1st September 2006
Section 19(1)	Records, information etc.: removal and use of parts of human bodies for transplantation etc.	Only for the purpose of enabling regulations to be made to come into force on or after 1st September 2006
Section 40(2)(c)	Use of organ no longer required for procurator fiscal purposes	Only for the purpose of enabling orders to be made to come into force on or after 1st September 2006
Section 41(2)(b)	Notice under section 38(2) or 40(2)(a): further provision	Only for the purpose of enabling orders to be made to come into force on or after 1st September 2006
Section 48(2)	Use of organ removed before day on which section 40 comes into force	Only for the purpose of enabling orders to be made to come into force on or after 1st September 2006
Section 53(6)	Amendment of the Anatomy Act 1984	Only for the purpose of enabling orders under section 4B(3) of the Anatomy Act 1984 to be made to come into force on or after 1st September 2006
Section 53(7)(e)	Amendment of the Anatomy Act 1984	Only for the purposes or enabling regulations under section 5(6)(a) of the Anatomy Act 1984 to be made to come into force on or after 1st September 2006

<i>Column 1 Provision of the Act</i>	<i>Column 2 Subject matter</i>	<i>Column 3 Purpose</i>
Section 53(9)	Amendment of the Anatomy Act 1984	<p>Only for the purposes of enabling</p> <p>(a) orders under section 6A(2) of the Anatomy Act 1984 to be made;</p> <p>(b) regulations under section 6A(12) of that Act to be made; and</p> <p>(c) applications for licences under section 6A(9) of that Act to be made and determined,</p> <p>and such orders, regulations or licences to come into force on or after 1st September 2006</p>
Section 53(12)	Amendment of the Anatomy Act 1984	<p>Only for the purpose of enabling regulations under section 8(1) of the Anatomy Act 1984 to be made to come into force on or after 1st September 2006</p>
Section 53(13)	Amendment of the Anatomy Act 1984	<p>Only for the purposes of enabling</p> <p>(a) the Scottish Ministers to prepare, consult upon and publish a code of practice under section 8A(1), (3) and (4) of the Anatomy Act 1984; and</p> <p>(b) orders under section 8A(2)(a) and (b) of that Act to be made to come into force on or after 1st September 2006</p>
Section 55	Power to give effect to Community obligations	<p>Only for the purpose of enabling regulations to be made to come into force on or after 1st September 2006</p>
Section 58	Ancillary provision	<p>Only for the purpose of enabling orders to be made to come into force on or after 1st September 2006</p>

EXPLANATORY NOTE

(This note is not part of the Order)

This Order appoints dates for the coming into force of provisions of the Human Tissue (Scotland) Act 2006 (asp 4) (“the Act”). The Act received Royal Assent on 16th March 2006 and sections 52, 59, 60 and 62 came into force on that day.

Article 2 appoints 12th May 2006 as the day for the coming into force of the provisions in the Act specified in the Schedule, but only for a specified purpose or specified purposes.

Article 3 appoints 1st September 2006 as the day for the coming into force of all the provisions of the Act to the extent that they are not already in force at that date.

The specified provisions in the Schedule which come into force on 12th May 2006 for a specified purpose are:

Section 11 (removal of part of body of deceased person) for the purpose of enabling regulations to be made regarding the persons who may be authorised by a registered medical practitioner, or otherwise authorised, to remove a part of the body of a deceased person for any of the purposes referred to in section 3(1) of the Act.

Section 17 (restrictions on transplants involving live donor) for the purpose of enabling regulations to be made under section 17(3) to (5) as to cases in which section 17(1) and (2), which specify offences relating to live transplants, do not apply.

Section 18 (meaning of adult with incapacity for purposes of section 17(1)(c) and (2)(c)) for the purpose of enabling regulations to be made under section 18(2) which prescribe the form in which the Scottish Ministers issue a certificate that they are of the opinion that an adult is incapable in relation to a decision about the removal of regenerative tissue from the adult for transplantation, and specifying the period during which the certificate is in force.

Section 19 (records information etc.: removal and use of parts of human bodies for transplantation etc.) for the purpose of enabling regulations to be made under section 19(1) which require specified persons to maintain records or provide information relating to use or retention of parts removed from the bodies of deceased or living persons.

Section 40 (use of organ no longer required for procurator fiscal purposes) for the purpose of enabling orders to be made under section 40(2)(c) which specify persons or groups of persons who may provide approval to carry out research on an organ removed from the body of a deceased person during an examination carried out for the purposes of the functions, or under the authority of the procurator fiscal.

Section 41 (notice under section 38(2) or 40(2)(a): further provision) for the purpose of enabling orders to be made under section 41(2)(c) which specify the person or holder of a post who is defined as the “manager of an establishment” for the purposes of receiving notification from the procurator fiscal under sections 38(2) and 40(2)(a) of the Act that tissue sample or organs are no longer required for the fiscal’s purposes.

Section 48 (use of an organ removed before the day on which section 40 comes into force) for the purpose of enabling orders to be made under section 48(2) which specify persons or groups of persons who may approve new research on an organ removed from the body of a deceased person during an examination carried out for the purposes of the functions, or under the authority of the procurator fiscal, before the day on which section 40 of the Act comes into force, or which specify persons or groups of persons who may have approved existing research on such an organ before section 40 of the Act came into force.

Section 53(6), (7)(e) and (12) (amendment of the Anatomy Act 1984) for the purpose of enabling regulations or orders to be made for specified purposes under the Anatomy Act 1984 (“the 1984 Act”). Section 53(6) (which inserts sections 4A and 4B into the 1984 Act regarding lawful examinations) gives the Scottish Ministers the power to amend by order

the statutory period of 3 years beginning with the date of the deceased's death which governs the use of imported bodies for anatomical examination. Section 53(7)(e) makes a minor amendment to a regulation making power in section 5(6)(a) of the 1984 Act relating to the compiling of records by persons who are licensed to have possession of bodies or parts of bodies. Section 53(12) amends existing regulation making powers under section 8 of the 1984 Act.

Section 53(9) (which inserts section 6A into the 1984 Act regarding control of public display) for the purposes of enabling applications for a licence to a person to publicly display a body or body part under section 6A(9) of the 1984 Act to be made and determined and for such a licence to be granted before 1st September 2006 to come into force on or after that date. Section 53(9) is also brought into force to enable orders to be made specifying the persons responsible for the operation or control of specified museums and regulations to be made specifying the content of the records that must be kept by a person who has been granted a licence under section 6A(9) of the 1984 Act.

Section 53(13) (amendment of the Anatomy Act 1984) for the purposes of enabling orders to be made and enabling the Scottish Ministers to prepare, consult upon and publish on a code of practice. Section 53(13) (which inserts section 8A into the 1984 Act) gives the Scottish Ministers the power to bring into effect a code of practice to give practical guidance and lay down standards for those who are licensed to carry out anatomical examinations and those who are licensed to publicly display a body or body part.

Section 55 (power to give effect to Community obligations) for the purpose of enabling regulations to be made which amend the Act to implement or deal with matters arising from Community obligations relating to material which consists of, includes or is derived from human cells.

Section 58 (ancillary provisions) for the purpose of enabling orders to be made on such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes, or in consequence, of the Act.

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