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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 340**

**HUMAN TISSUE  
ANATOMY**

**The Human Tissue (Scotland) Act 2006 (Anatomy  
Act 1984 Transitional Provisions) Order 2006**

*Made* - - - - 7th June 2006  
*Laid before the Scottish  
Parliament* - - - - 9th June 2006  
*Coming into force* - - 1st September 2006

The Scottish Ministers, in exercise of the powers conferred by section 58 of the Human Tissue (Scotland) Act 2006<sup>(1)</sup>, and of all other powers enabling them in that behalf, hereby make the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Human Tissue (Scotland) Act 2006 (Anatomy Act 1984 Transitional Provisions) Order 2006 and shall come into force on 1st September 2006.

(2) In this Order—

“the Act” means the Anatomy Act 1984<sup>(2)</sup>; and

“the 2006 Act” means the Human Tissue (Scotland) Act 2006.

**Existing requests**

2.—(1) Where, before 1st September 2006, a person has expressed a request in accordance with section 4(1) of the Act (request that a person’s body be used for anatomical examination)<sup>(3)</sup>—

(a) section 4(2) of the Act (authorisation of use of a body in accordance with a request) shall apply on and after that date, whether or not the request has been made in accordance with section 4(1A) to (1D) of the Act (requirements as to requests)<sup>(4)</sup>; and

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(1) 2006 asp 4.

(2) 1984 c. 14.

(3) Section 4(1) is amended by section 53(5)(a) of the [Human Tissue \(Scotland\) Act 2006 \(asp 4\)](#) (“the 2006 Act”) with effect from 1st September 2006.

(4) Section 4(1A) to (1D) is inserted by the 2006 Act, section 53(5)(b) with effect from 1st September 2006.

(b) the request shall be treated as a request that the person's body be used after their death for anatomical examination within the meaning of section 1(1) of the Act (definition of anatomical examination) as substituted by section 53(2)(a) of the 2006 Act.

(2) Where, before 1st September 2006, a person in expressing a request in accordance with section 4(1) of the Act has given permission under section 6(1) of the Act (permission for parts of a person's body to be held after anatomical examination concluded)(5), section 6(2) of the Act (authorisation of possession of parts in accordance with permission) shall apply on and after that date, whether or not the request has been made in accordance with section 4(1A) to (1D) of the Act.

### **Existing authorisations**

**3.—**(1) Where, before 1st September 2006, a person lawfully in possession of a body after death has given authority for its anatomical examination under section 4(2) of the Act, but that authority has not yet expired, that authority shall be authority on and after that date for anatomical examination within the meaning of section 1(1) of the Act as substituted by section 53(2)(a) of the 2006 Act.

(2) Where, before 1st September 2006, a person lawfully in possession of a body after death has authorised its anatomical examination in accordance with section 4(3) of the Act (authorisation of use of a body for anatomical examination where there is no objection)(6), but that authority has not yet expired, that authority shall on and after that date—

- (a) be treated for the purposes of the Act as if given under section 4(2) of the Act in pursuance of a request under section 4(1) and have effect until expiry of that authority; and
- (b) be authority for anatomical examination within the meaning of section 1(1) of the Act as substituted by section 53(2)(a) of the 2006 Act.

(3) Where, in giving authority under section 4(3) of the Act before 1st September 2006, authority has been given under section 6(3) of the Act (authorisation for possession of parts where there is no objection)(7), that authority shall, on and after that date, have effect and be treated for the purposes of the Act as if given under section 6(2) of the Act in pursuance of permission included in a request under section 4(1).

### **Deemed permission for public display where existing authority has been given**

**4.—**(1) Where, on or after 1st September 2006—

- (a) possession of a part of a body is lawful by virtue of section 6 of the Act; and
- (b) authority under section 6(2) of the Act was given before 1st September 2006,

it shall be deemed, for the purposes of section 6A(4)(a) of the Act(8), that the request expressed by the deceased included permission for public display and was not withdrawn, unless the deceased stated otherwise in the request.

(2) Where, on or after 1st September 2006, possession of a part of a body is lawful by virtue of section 6 of the Act as a result of the operation of article 3(3), it shall be deemed for the purposes of section 6A(4)(a) of the Act that the request mentioned in that article included permission for public display and was not withdrawn, unless there is reason to believe that the deceased or the surviving spouse, surviving civil partner or any surviving relative objected to public display.

(3) Where, on or after 1st September 2006, an anatomical specimen is in the course of being used for anatomical examination in pursuance of an authority under section 4(2) of the Act that was given

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(5) Section 6(1) is amended by the 2006 Act, section 53(8)(a) with effect from 1st September 2006.

(6) Section 4(3) was amended by [S.S.I. 2005/623](#) and is repealed by the 2006 Act, section 53(5)(c) with effect from 1st September 2006.

(7) Section 6(3) was amended by [S.S.I. 2005/623](#) and is substituted by the 2006 Act, section 53(8)(b) with effect from 1st September 2006.

(8) Section 6A is inserted by the 2006 Act, section 53(9) with effect from 1st September 2006.

before 1st September 2006 it shall be deemed, for the purposes of section 6A(6)(a) of the Act, that the request expressed by the deceased under section 4(1) of the Act included permission for public display, unless the deceased stated otherwise in the request.

(4) Where, on or after 1st September 2006, an anatomical specimen is in the course of being used for anatomical examination in pursuance of an authority under section 4(2) of the Act as a result of the operation of article 3(2), it shall be deemed for the purposes of section 6A(6)(a) of the Act, that the request mentioned in that article included permission for public display and was not withdrawn, unless there is reason to believe that the deceased or the surviving spouse, surviving civil partner or any surviving relative objected to public display.

St Andrew's House,  
Edinburgh  
7th June 2006

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes transitional provision for the purposes, or in consequence of, the amendments made to the Anatomy Act 1984 (c. 14) (“the Act”) by section 53 of the [Human Tissue \(Scotland\) Act 2006 \(asp 4\)](#) (“the 2006 Act”).

Those amendments come into force on 1st September 2006, which is when the 2006 Act comes into force by virtue of the Human Tissue (Scotland) Act 2006 (Commencement) Order 2006 ([S.S.I. 2006/251](#)).

This Order also comes into force on that date.

Amongst other things, the 2006 Act amended the 1984 Act so that—

- (a) a new meaning of anatomical examination was substituted in section 1 of the Act;
- (b) new requirements were inserted into the Act as to the making of requests by a person that their body be used after death for anatomical examination and for the possession of parts of their body after anatomical examination concluded;
- (c) provisions of the Act which allowed authority to be given for the anatomical examination of a body (and the possession of parts of a body once anatomical examination concluded) if a person lawfully in possession of a body had no reason to believe that the deceased had expressed an objection to their body being so used, or that the surviving spouse, surviving civil partner or any surviving relative objected to the body being so used, were repealed;
- (d) controls on the public display of bodies and parts of bodies to be used for, in the course of being used for or that have been used for anatomical examination were introduced. These included, amongst other things, a condition, in certain circumstances, for public display that the deceased’s request that their body be used for anatomical examination includes permission for public display.

Article 2 of this order makes transitional provision in respect of existing requests made by a person under the Act before 1st September 2006 that their body be used after their death for anatomical examination, so that—

- (a) authority may be given by a person lawfully in possession of the person’s body after death for anatomical examination and for the possession of parts of their body after anatomical examination has concluded, whether or not the request continues to meet the new requirements contained in the Act;
- (b) the request is to be treated as a request that the persons body be used after their death for the new meaning of anatomical examination.

Article 3 of this Order makes transitional provision in respect of existing authorisations given under the Act before 1st September 2006 so that—

- (a) authority given by a person lawfully in possession of a body and who had no reason to believe that the deceased had expressed an objection to their body being so used, or the surviving spouse or relative objects to the body being so used, continues to have effect as if it were authority given under section 4(2) or 6(2) of the Act;
- (b) existing authorisation for anatomical examination is treated as being authorisation for the new meaning of anatomical examination.

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Article 4 of this Order makes transitional provision so that where, before 1st September 2006, authority has been given for anatomical examination, or the possession of parts of a body once anatomical examination has concluded, the condition for public display that the deceased's request include permission for public display is treated as being met in certain circumstances.