

# HUMAN TISSUE (SCOTLAND) ACT 2006

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## EXPLANATORY NOTES

### THE ACT – AN OVERVIEW

#### **Part 5: Amendment of the Anatomy Act 1984**

##### *Section 53 – Amendment of the Anatomy Act 1984*

121. Section 53 of the Act amends the [Anatomy Act 1984 \(c.14\)](#) (“the 1984 Act”) to change the provisions which govern the use of whole cadavers and body parts for the purpose of anatomical examination in Scotland, in line with similar changes being made in England, Wales and Northern Ireland and with other legislative changes which have taken place since 1984; in particular, changes made by the Human Tissue Act 2004. It also introduces new provisions which, for example, provide a right of appeal for any refusal of a licence by Scottish Ministers for premises to be used for the teaching of anatomy or individuals to become teachers of anatomy and take on new powers to govern the public exhibition of anatomical specimens.
122. Subsection (2) amends section 1 (definitions and scope) of the 1984 Act. Paragraph (a) amends the definition of anatomical examination by substituting a new section 1(1) of the 1984 Act. The new section 1(1) provides that an anatomical examination means macroscopic examination of a body for the purposes of teaching, studying or training in or researching into, the gross structure of the human body or surgical and clinical procedures that involve dissection, removal of body parts and the practice of reconstruction including using artificial body parts. The definition includes examination of a body part for those purposes where it is separated from a body in the course of an anatomical examination into that body. Paragraph (b) makes clear that an imported body is not to be treated as an anatomical specimen until authority for its anatomical examination has been given. In doing so it will ensure that where a body is imported for use for anatomical examination in Scotland it is not regarded as an anatomical specimen as defined in the Anatomy Act 1984 until authority for the examination of that body in Scotland has been given. Paragraph (c) amends section 1(4) of the 1984 Act so as to exclude examinations instructed by the procurator fiscal or post mortem examinations (as defined by section 19 of the Act) from the scope of the 1984 Act. Paragraph (c) amends section 1(5) of the 1984 Act so as to provide that if part of a body is authorised to be removed from the body of a deceased adult for the purposes of transplantation, research, education, training or audit under various provisions of Part 1 of the Act, the Act, rather than the 1984 Act, will apply to the removal and use of the part even if the transplantation, research, education, training or audit consists of or involves anatomical examination.
123. Subsection (3) amends section 2 (control of examination and possession of anatomical examinations) of the 1984 Act. Sub-paragraph (i) of paragraphs (a) and (b) amend subsections (1) and (2) of the section 2 of the 1984 Act to include within their scope new sections 4A of the 1984 Act regarding authorisation of use of a body imported into Scotland for anatomical examination and new section 4B of the 1984 Act regarding additional provision on lawful examinations under sections 4 or 4A. The effect is that sections 2(1) and (2) now provide that no person shall carry out an anatomical

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examination or have an anatomical specimen in his possession unless it is lawful by virtue of sections 4 to 4B. Sub-paragraph (ii) of paragraph (a) amends section 2(1)(d) of the 1984 Act so as to provide that no person shall carry out an anatomical examination of an imported body unless the death has been registered or recorded (or the equivalent) under the law applicable in the country or the territory in which the person died. Sub-paragraph (ii) of paragraph (b) amends section 2(2)(c) so as to provide that no person shall possess an anatomical specimen of an imported body unless a certificate of cause of death or other document having equivalent effect has been issued under the law applicable in the country or territory in which the person died. Sub-paragraphs (3)(a)(ii) and (3)(b)(ii) and (3)(c) also repeal references to the provisions of the Births and Deaths Registration Act 1953 (which do not apply to Scotland) in section 2 of the 1984 Act.

124. Subsection (4) amends section 3(3)(b) of the 1984 Act so as to remove the wording in that provision that permits a person to be authorised to carry out an anatomical examination if he carries out the examination in the course of teaching or studying, or researching into morphology. The effect of section 3(3)(b) will therefore be that a person will only be authorised to carry out an anatomical examination under that subsection if at the time of the examination he is either licensed to carry it out under section 3(2)(a) of the 1984 Act or he has permission to carry it out from a person who is so licensed.
125. Subsection (5) amends section 4 of the 1984 Act (lawful examinations). Paragraph (a) provides that only a person who is 12 years of age or over may make a request that his body be used after his death for anatomical examination. Paragraph (b) inserts new subsections (1A) to (1D) into section 4 of the 1984 Act to make it a requirement that such a request must be made in writing, signed by the person making the request and witnessed by an adult. Alternatively, in relation to such requests by persons who are blind or unable to write, the request must be signed on behalf of that person by another adult. Again, the request must be witnessed by an adult. In the latter case, new section 4(1B) provides that such a request must contain a statement signed by both the signatory and the witness that the person who is blind or unable to write expressed his intention to make the request and requested the signatory to sign on his behalf. New section 4(1C) provides for additional requirements in respect of requests by persons aged 12 years or over, but not yet an adult, including requests from such persons who are blind or unable to write. Requests from persons aged 12 years or over, but not yet an adult will require to be witnessed by two adults, present at the same time, and each witness must certify in writing that the person understood the effect of the request and was not acting under undue influence in making it. For requests from such persons who are blind or unable to write the signatory and the witness must certify in writing that the person understood the effect of the request and was not acting under undue influence in making it. New section 4(1D) provides that nothing in 4(1A)(b) prevents a person who is blind from signing a request under subsection (1) in accordance with paragraph (a) of subsection (1A).
126. Paragraphs (c), (e) and (g) repeal section 4(3), (7), (8), (10), (11) of the 1984 Act, which are related to the circumstances under which a person in possession of a body could authorise it to be used for anatomical examination and the statutory period at the end of which authority under section 4 of the 1984 Act expired. Paragraph (ca) maintains the restrictions that authorisation for anatomical examination cannot be given by a person entrusted with a body for the purpose only of its interment or cremation and that authority for lawful examination expires at the end of the statutory period. Paragraph (d) repeals the words “this subsection applies only to Scotland” in section 4(6) of the 1984 Act, which requires the consent of the procurator fiscal to be obtained in certain circumstances before authority to use a body for anatomical examination may be given or acted upon. This is consequential upon an amendment made in the Human Tissue Act 2004 which extends the application of section 4(6) in Scotland (by virtue of section 59(5)(c) of the 2004 Act. As the 2004 Act repeals the provisions of the 1984 Act as they relate to England & Wales, and the present Act will amend the provisions of the 1984 Act as they relate to Scotland, there is no need for section 4(6) to provide that that

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subsection applies only to Scotland. Paragraph (f) will insert a new subsection 4(9A) of the 1984 Act to provide that subsection 4(9) of that Act (allowing authority to be given in the case of a body lying in a hospital, nursing home, other institution or accommodation provided by a care home service by a person designated by the person having the control and management of the institution) does not apply to the use of an imported body for anatomical examination.

127. Subsection (6) inserts new provisions 4A and 4B into the 1984 Act to govern the lawful use of imported bodies. New section 4A allows a person who must be licensed under the Act to carry out anatomical examinations and to have possession of anatomical specimens, and who is lawfully in possession of an imported body outwith Scotland to authorise its use for anatomical examination if it is imported for such use in Scotland, no more than 3 years have elapsed since the date of death and either there has been no previous anatomical examination of the imported body or any such previous examination was only made for the purpose of removal and retention of one or more of the body parts for the purposes of education, training or research. If authority under section 4A is given, the anatomical examination of the imported body is lawful provided that the requirements in new section 4B(1) and (2), which also apply to the anatomical examination in accordance with a request under section 4, are met. New section 4B makes additional provision in relation to lawful examinations. Subsection (1) of new section 4B provides that no authority may be given in respect of a body under section 4(2) or 4A by a person entrusted with the body for the purpose only of its interment or cremation. Subsections (2), (3) and (4) of new section 4B make additional provision in relation to the setting of, and expiry of, the statutory period of 3 years, after which the authority to use a body for anatomical examination expires.
128. Subsection (7) amends section 5(1), (2), (4) and (5) of the 1984 Act (control of possession after examination). Paragraph (a) substitutes a new section 5(1) of the 1984 Act so as to extend the application of that subsection to the authorisation of use of an imported body for anatomical examination under section 4A or situations under section 4A has expired or situations where a body has been used for anatomical examination outwith Scotland, other than the case where the body has been imported for use for, and may be used or is being used for, anatomical examination in Scotland. In addition, it provides that section 5 will apply whether or not the body or part of the body has undergone any process to preserve it. Paragraph (aa) provides that the prohibition on any person having a body or part of a body that section 5(1) applies to, does not apply where it is permitted in the circumstances set out in new subsection (4A). Paragraph (b) extends the scope of section 5(4) of the 1984 Act relating to the circumstances in which section 5(2) of that Act (prohibition of possession of a body or part of the body) does not apply. The effect is that section 5(4) now allows a person in certain circumstances to have possession of part of an imported body whose anatomical examination has been concluded. Paragraph (b) also inserts a new subsection (4A) which allows, in certain circumstances, the possession of a body which has been used for anatomical examination outwith Scotland. Paragraph (c) extends the scope of section 5(5) of the 1984 Act so as to provide that a licence may be granted to a person, to have possession of bodies and parts of bodies in the interests of training, as well as in the interests of education or research.
129. Subsection (8)(a) adjusts section 6(1) of the Anatomy Act 1984 to reflect the proposed change to a procedure of only accepting written requests, with special arrangements for those who are blind or unable to write. Paragraph (b) substitutes a new section 6(3) into the 1984 Act to provide that the authority given under inserted section 4A for use of an imported body for anatomical examination may include authority for possession of parts (or any specified parts) of the body to be held in accordance with the authority after the examination is concluded.
130. Subsection (9) inserts a new section 6A into the 1984 Act. Subsection (1) of new section 6A provides that no person may publicly display an anatomical specimen, a body or part of a body which has either been used for anatomical examination or

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used outwith Scotland for such an examination, whether or not it has undergone a process to preserve it. Subsection (1A) of new section 6A exempts persons responsible for the operation or control of museums, which Scottish Ministers specify by order, from the licensing requirements for the public display of bodies and body parts. Subsections (2), (2A), (2B), (2C), (2D) and (2E) allow public display of anatomical human remains, subject to conditions. The substituted subsections allow, in defined conditions, the public display of the following: parts from bodies retained after anatomical examination in Scotland has concluded (subsections (2) and (2A)); bodies and parts that are in the course of being used for anatomical examination in Scotland (subsections (2B) and (2C)); parts of bodies used outwith Scotland for anatomical examination or examination which has the characteristics of anatomical examination during the course of which the part was removed (subsection (2D)); bodies used outwith Scotland for anatomical examination or examination which has the characteristics of anatomical examination but which have not been anatomically examined in Scotland (subsection (2E)). Subsection (3) of the new section 6A allows Scottish Ministers to grant a licence to a person to display a body or body part if they think it desirable to do so in the interests of education, training or research. A person will be authorised to publicly display a body or body part under section 6A(3), if at the time of the display, he is so licensed. Subsections (3A) and (3B) of the new section 6A prohibits the public display of bodies or part of bodies during while a procedure in relation to an anatomical examination or any similar procedure is actually being carried out. This prohibition applies to persons who are authorised to publicly display the body or part under a licence from the Scottish Ministers and to persons responsible for the operation or control of museums specified in an order by the Scottish Ministers, and so exempt from the requirement to be licensed. Subsection (4) of the new section 6A provides that a licence-holder under section 6A(3) shall be required to compile and retain such records as may be specified by regulations made by the Scottish Ministers. Subsection (5) of the new section 6A excludes from the prohibition on public display, display which enables people to pay their final respects to the deceased or which is incidental to the deceased's funeral and, in certain circumstances, display at a place of religious worship. Subsection (6) of the new section 6A provides that the power to make an order specifying the persons responsible for the operation or control of museums, which will not require a licence for the public display of human anatomical remains, and regulations under inserted section 6A(4) shall be subject to negative procedure in the Scottish Parliament.

131. Subsection (10) inserts a new subsection (7A) into section 7 of the 1984 Act (licences: general provisions). Paragraph (a) amends section 7(7) so that that subsection is subject to the new inserted section 7(7A). Section 7(7) of the 1984 Act requires revocation of a licence by Scottish Ministers to be accompanied by written notice to the licence holder, specifying the reasons why, and the date on which, the licence is to be revoked (which date must be 28 days from the date of the notice). Inserted section 7(7A) will provide an exception to the application of section 7(7) if Scottish Ministers consider that there would be a risk to public health if the requirements of section 7(7) were to apply. In those circumstances, Scottish Ministers are required to notify the licence holder that the revocation takes effect on the date specified in the notification. The 28 day period of notice is therefore not required in these circumstances.
132. Subsection (11) inserts a new section 7A into the 1984 Act. Subsection (1) of the new section 7A introduces a right of appeal to a sheriff principal against decisions made by Scottish Ministers under various provisions of the amended 1984 Act either to refuse to grant a licence for a particular purpose, to grant a licence subject to conditions or to revoke a licence. Subsections (2) and (3) of the new section 7A will provide that the applicant may appeal on specified grounds to the sheriff principal within 21 days from the date of the decision appealed against. The specified grounds are that the Scottish Ministers in arriving at their decision erred in law, based their decision on an incorrect material fact, acted contrary to natural justice or exercised their discretion in an unreasonable manner. Subsection (4) of the new section 7A specifies the appropriate sheriff principal to which an appeal lies, depending on what type of decision is appealed

against. Subsection (5) of new section 7A specifies the disposal powers of the sheriff principal when allowing an appeal under this section. In allowing the appeal, the sheriff principal must set aside the decision and must either substitute his own decision or remit the case to the Scottish Ministers anew.

133. Subsection (12) amends section 8(1) (regulations) of the 1984 Act. Paragraph (a) inserts a reference to the new section 4A (lawful examination: imported bodies) into section 8(1)(a), so that Scottish Ministers may make regulations in relation to bodies the anatomical examination of which is lawful by virtue of either section 4 or 4A, with a view to securing their efficient and orderly examination and the decent disposal of the bodies (or parts of them) after their examination has been concluded. Paragraph (b) substitutes in section 8(1)(b) for the words “lawful by virtue of section 6” the words “authorised under section 5(5)”, so that the scope of regulations that the Scottish Ministers may now make under section 8(1)(b), with a view to securing that they are decently cared for, is applied to bodies and to body parts which are the subject of a licence under section 5(5). Paragraph (c) expands the regulation making powers of the Scottish Ministers under section 8(1) to reflect the insertion of the new section 6A (control of public display), by inserting a new section 8(1)(c), allowing Scottish Ministers to make regulations in relation to bodies and to body parts displayed under section 6A(3) with a view to securing that the parts are decently cared for and displayed with appropriate respect.
134. Subsection (13) inserts a new section 8A into the 1984 Act. Subsection (1) of the new section 8A enables Scottish Ministers to prepare a Code of Practice, firstly to give practical guidance to certain persons (those licensed under section 3(2) to carry out anatomical examinations or to have possession of anatomical specimens, those authorised under section 5(5) to have possession of bodies and parts of a body, and those authorised under section 6A(3) to publicly display parts of bodies and parts of a body) and secondly to lay down standards expected in relation to those specified activities. Subsections (2) to (9) of the new section 8A make further provision in relation to the making of a code of practice. Under subsection (2), a code of practice prepared under (1) may not be given effect unless and until it has been confirmed by order of, and brought into force on a day appointed by order by, the Scottish Ministers; such orders are, under subsection (9), to be made by statutory instrument subject to negative procedure in the Scottish Parliament. Subsection (3) requires the Scottish Ministers to consult such persons as they see fit and to lay a draft of the code before the Scottish Parliament before they confirm it under subsection (2)(a), whilst subsection (4) requires them to thereafter publish a confirmed code of practice in such way as, in their opinion, is likely to bring it to the attention of those interested in it. The Scottish Ministers are also, under subsection (5), required to keep a code of practice confirmed by order under subsection (2)(a) under review and to prepare a revised code of practice where appropriate, with subsection (6) providing that the procedures outlined in subsections (2) to (4) will also apply to such a revised code of practice. Subsection (7) provides that any person licensed or authorised as mentioned in subsection (1)(a) is to have regard to the provisions of a published code of practice in so far as the provisions are applicable to the activity that the person is licensed or authorised to carry out. However, a failure on the part of any such person to comply with any provision of such a code will not of itself render them liable to any proceedings. Subsection (8) enables Scottish Ministers, in carrying out their functions under the 1984 Act with respect to licences, to take into account any relevant observance of, or failure to observe, a code of practice published under subsection (4), so far as dealing with an application for a licence under section 3(2) (to carry out anatomical examinations or to have possession of anatomical specimens), under section 5(5) (to have possession of bodies or parts of a body) or under section 6A(3) (to publicly display bodies or parts of a body).
135. Subsection (14) removes the reference to her Majesty’s Inspector of Anatomy (to reflect the cessation of that post in England and Wales under the Human Tissue Act 2004) whilst retaining the reference to Her Majesty’s Inspector of Anatomy for Scotland.

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136. Subsection (15) amends the powers of HM Inspector of Anatomy for Scotland under section 10 (inspector's powers to inspect records and premises) of the 1984 Act. Paragraph (a) amends section 10(1) to enable an inspector to require the production of, and inspect and take away copies of, any records which a person is required to retain by virtue of the new requirement under section 6A(4) to compile and retain records by holders of a licence granted under section 6A(3) (licence by Scottish Ministers to display part of a body). Paragraph (b) amends subsection (2)(a) of section 10, to extend the powers of an inspector to enter and inspect premises in accordance with that subsection to where he has reasonable cause to believe that an offence under any of the offences listed in section 11(1) has been or is being committed. Paragraph (c) repeals subsection (5) of section 10, which had limited the power to enter premises under subsection (2) to where a licence under section 3(1) is effective in respect of the premises both at the time of the suspected offence and at the time of the entry.
137. Subsection (16) amends section 11 (offences) of the 1984 Act. Paragraph (a) of subsection (16) adds the unlicensed display of a body or part of a body, in contravention of the new section 6A(1) of the 1984 Act, and the display a body or part of a body in contravention of new subsection (3A), to the list of possible offences under section 11(1) of the 1984 Act. Paragraph (b) adds to the existing listed offences under section 11(5) of the 1984 Act, in relation to record and information keeping, a failure to comply with the new requirement under section 6A(4) to compile and retain records by licence holders under section 6A(3) (licence by Scottish Ministers to display a body or part of a body). Paragraph (c) amends section 11(9) to add members of bodies corporate to the list of individuals who will be guilty along with the body corporate where the offence was committed with the consent or connivance of or is attributable to any neglect on the part of that person. Paragraph (d) inserts two new subsections (9A) and (9B) into section 11, which will extend to Scottish partnerships and unincorporated associations respectively liability for offences under section 11 or against regulations made under section 8 of the 1984 Act.
138. Subsection (17) inserts a new interpretation section (section 11B) to the 1984 Act to introduce definitions of "adult" and "imported body", terms which are used within the new provisions being inserted into the 1984 Act by virtue of section 48.