



# Human Tissue (Scotland) Act 2006

## 2006 asp 4

### PART 5

#### AMENDMENT OF THE ANATOMY ACT 1984

#### 53 Amendment of the Anatomy Act 1984

- (1) The Anatomy Act 1984 (c. 14) is amended as follows.
- (2) In section 1 (definitions, and scope of Act)—
  - (a) for subsection (1) substitute—

“(1) In this Act, “anatomical examination” means macroscopic examination of a body for the purposes of teaching or studying, or training in or researching into, the gross structure of the human body or surgical or clinical procedures by—

- (a) dissection,
- (b) removal of, or carrying out a procedure on or in relation to, one or more parts of the body,
- (c) implanting into the body any—
  - (i) part of a body,
  - (ii) prosthesis, or
  - (iii) implant,

and where any part of the body is separated in the course of its anatomical examination the examination includes the examination of the part for those purposes.”;

- (b) after subsection (2), insert—

“(2A) An imported body is not an anatomical specimen until an authority for its anatomical examination has been given under section 4A(1).”;
- (c) in subsection (4)—
  - (i) for the words “competent legal authority” substitute “procurator fiscal”;
  - (ii) for the words from “carried” to the end substitute “a post-mortem examination as defined in section 23 of the Human Tissue (Scotland) Act 2006 (asp 4)”;

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- (d) in subsection (5), for the words from the beginning to “research” where it second occurs, substitute “ If a part of a body is authorised to be removed for transplantation, research, education, training or audit under section 6, 7, 8, 9 or 10 of the Human Tissue (Scotland) Act 2006 (asp 4), that Act (and not this Act) applies to the removal and use of the part, even if the transplantation, research, education, training or audit ”.
- (3) In section 2 (control of examination and possession of anatomical specimens)—
- (a) in subsection (1)—
- (i) in paragraph (c), for the words “section 4” substitute “ sections 4 to 4B ”;
- (ii) in paragraph (d), for the words from “section 15” to the end substitute “ section 22 of the 1965 Act or, where the body concerned is an imported body, death has been registered or recorded (or the equivalent) under the law concerning such matters applicable in the country or territory in which the person died ”;
- (b) in subsection (2)—
- (i) in paragraph (b), for the words “section 4” substitute “ sections 4 to 4B ”;
- (ii) in paragraph (c), for the words from “section 22(1)” to the end substitute “ section 24 of the 1965 Act or, where the body concerned is an imported body, a certificate or other document having the equivalent effect has been issued under the law concerning such matters applicable in the country or territory in which the person died ”;
- (c) in subsection (4), the words from “ “the 1953 Act”” to “and”, where it second occurs, are repealed.
- (4) In section 3(3)(b) (licences), the words from “carries” to “and” are repealed.
- (5) In section 4 (lawful examinations)—
- (a) in subsection (1), for the words from “a person” to “request” substitute “ a person, who at the time the request is made is 12 years of age or over, requests ”.
- (b) after that subsection, insert—
- “(1A) A request by a person under subsection (1) must be in writing and—
- (a) signed by the person and subject to subsection (1C)(a), witnessed by an adult who is a witness to both the signature and the content of, and signs, the writing, or
- (b) subject to subsections (1C)(b) and (1D), if the person is blind or unable to write, signed by an adult (the signatory) on his behalf and witnessed by another adult who is a witness to both the signature and the content of, and signs, the writing.
- (1B) A request by a person under subsection (1) which is signed by a signatory on behalf of the person and witnessed as mentioned in subsection (1A)(b) must contain a statement signed by both the signatory and the witness in the presence of the person and of each other that the person, in the presence of them both, expressed his intention to make the request and requested the signatory to sign the request on his behalf.

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(1C) If the person making the request under subsection (1) is 12 years of age or over but not an adult—

- (a) in the circumstances mentioned in subsection (1A)(a)—
  - (i) the request must be witnessed by two adults who are present at the same time, and
  - (ii) each witness must, at the time of witnessing, certify (in writing signed by the witness) that, in the opinion of the witness, the person understood the effect of the request and was not acting under undue influence in making it,
- (b) in the circumstances mentioned in subsection (1A)(b)—
  - (i) the signatory must, at the time of signing on behalf of the person, certify (in writing signed by the signatory) that, in the opinion of the signatory, the person understands the effect of the request and is not acting under undue influence in making it, and
  - (ii) the witness must, at the time of witnessing, certify (in writing signed by the witness) that, in the opinion of the witness, the person understands the effect of the request and is not acting under undue influence in making it.

(1D) Nothing in paragraph (b) of subsection (1A) prevents a person who is blind from signing a request under subsection (1) in accordance with paragraph (a) of subsection (1A).”;

- (c) subsection (3) is repealed;
- (d) in subsection (4), for the words “subsections (6) to (8)” substitute “subsection (6) and section 4B(1) and (2) ”;
- (e) in subsection (6), the words “This subsection applies only to Scotland.” are repealed;
- (f) subsections (7) and (8) are repealed;
- (g) after subsection (9), insert—

“(9A) This section does not apply to the use of an imported body for anatomical examination.”;
- (h) subsections (10) and (11) are repealed.

(6) After that section, insert—

#### **“4A Lawful examinations: imported bodies**

- (1) Subject to subsection (2), the person lawfully in possession of an imported body may authorise use of the body for anatomical examination if—
  - (a) the body is imported for use for anatomical examination in Scotland,
  - (b) either—
    - (i) there has been no previous examination of the imported body outwith Scotland (being anatomical examination or examination which has the characteristics of anatomical examination), or

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- (ii) there has been such an examination of it but only for the purpose of removing and retaining one or more parts of the body for the purposes of education, training or research, and
- (c) no more than three years have elapsed since the date of death.
- (2) The person may only authorise such use if licensed under section 3(2) to—
  - (a) carry out anatomical examinations, and
  - (b) have possession of anatomical specimens.
- (3) Subject to section 4B(1) and (2), the anatomical examination of an imported body in accordance with an authority given in pursuance of this section is lawful by virtue of this section.

#### **4B Lawful examinations: additional provision**

- (1) No authority may be given under section 4(2) or 4A(1) in respect of a body by a person entrusted with the body for the purpose only of its interment or cremation.
- (2) Authority under section 4(2) or 4A(1) expires at the end of the statutory period (even if the person lawfully in possession of the body concerned authorises its use under section 4(2) or, as the case may be, 4A(1) for a longer or a shorter period or for no particular period).
- (3) In subsection (2), “the statutory period” means the period of 3 years (or such other period as the Scottish Ministers may from time to time by order specify for the purposes of this subsection) beginning with the date of the deceased’s death.
- (4) The power to make an order under subsection (3) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament; and no such order shall apply in relation to the body of a person who died before the coming into force of the order.”.
- (7) In section 5 (control of possession after examination)—
  - (a) for subsection (1) substitute—
    - “(1) This section applies where—
      - (a) authority under section 4(2) or, as the case may be, 4A(1) to use a body for anatomical examination has expired,
      - (b) the anatomical examination of a body has been concluded before the expiry of such authority, or
      - (c) a body has been used for examination outwith Scotland (being anatomical examination or examination which has the characteristics of anatomical examination) except in a case where—
        - (i) that examination was only for the purpose of removing or retaining one or more parts of the body for the purposes of education, training or research,
        - (ii) the body is imported for use for anatomical examination in Scotland, and
        - (iii) no more than three years have elapsed since the date of death,

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whether or not the body or part of the body has undergone any process to preserve it.”;

- (b) in subsection (2), for “and (4)” substitute “, (4) and (4A) ”;
- (c) for subsection (4) substitute—

“(4) Subsection (2) does not apply—

(a) where—

- (i) a person has possession of a part of a body whose anatomical examination has been concluded before the expiry of the authority under section 4(2) or, as the case may be, 4A(1),
- (ii) the part is such that the person from whose body it came cannot be recognised simply by examination of the part,
- (iii) the person with possession is authorised to have possession under subsection (5), and
- (iv) possession of the part is lawful by virtue of section 6, nor

(b) where—

- (i) a person has possession of a part of a body which has been used for examination outwith Scotland (being anatomical examination or examination which has the characteristics of anatomical examination),
- (ii) the part was removed from the body during the course of the examination,
- (iii) the death of the person from whose body the part has come has been registered or recorded (or the equivalent) under the law applicable in the country or territory in which the person died,
- (iv) the part is such that the person from whose body it came cannot be recognised simply by examination of the part, and
- (v) the person with possession is authorised to have possession under subsection (5).

(4A) Subsection (2) does not apply where—

- (a) a person has possession of a body which has been used for examination outwith Scotland (being anatomical examination or examination which has the characteristics of anatomical examination),
- (b) the death of the deceased has been registered or recorded (or the equivalent) under the law applicable in the country or territory in which the deceased died,
- (c) the body was not imported for use for anatomical examination in Scotland; and is not so used at any time,
- (d) the body is such that the deceased cannot be recognised simply by examination of the body, and
- (e) the person with possession of the body is authorised to have possession under subsection (5).”;

- (d) in subsection (5)—

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- (i) after the word “education” insert “, training”;
  - (ii) after the word “of”, at the third place it occurs, insert “ bodies or, as the case may be, ”;
  - (iii) after the word “of”, at the fifth place it occurs, insert “ a body or ”;
  - (e) in subsection (6)(a), after the word “to” insert “ bodies or ”.
- (8) In section 6 (lawful possession after examination)—
- (a) in subsection (1)—
    - (i) repeal the words “a person, in expressing”;
    - (ii) for “has given” substitute “ includes ”;
    - (iii) for “his” substitute “ the person's ”;
  - (b) for subsection (3) substitute—
    - “(3) Authority given under section 4A(1) for the 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.”.
- (9) After section 6, insert—

*“Control of public display*

**6A Control of public display**

- (1) Subject to subsections (2) to (8), no person shall publicly display—
- (a) an anatomical specimen,
  - (b) a body or part of a body which has been used for anatomical examination, or
  - (c) a body or part of a body which has been used outwith Scotland for anatomical examination or examination which has the characteristics of anatomical examination,
- whether or not it has undergone a process to preserve it.
- (2) Subsections (3)(c), (5)(e), (7)(d) and (8)(d) do not apply to such persons as the Scottish Ministers may by order specify; being persons responsible for the operation or control of such museums as they may so specify.
- (3) Where—
- (a) a person is authorised under section 5(5) to have possession of a part of a body,
  - (b) possession of the part is lawful by virtue of section 6, and
  - (c) the display is authorised under subsection (9),
- subsection (1) does not apply as respects the public display of the part if the condition in subsection (4) is met.
- (4) The condition is that where the lawful possession of the part by virtue of section 6 is—
- (a) in pursuance of a request under section 4(1), that request also includes permission for public display (and there is no reason to believe that permission was withdrawn), or

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(b) in pursuance of an authority under section 4A(1), that authorisation also includes authority for public display.

(5) Where—

- (a) a person is authorised under section 3(4) to have possession of an anatomical specimen,
- (b) the anatomical specimen is in the course of being used for anatomical examination in pursuance of an authority under section 4(2) or 4A(1),
- (c) the body or a part of the body is such that the deceased cannot be recognised simply by examination of the body or, as the case may be, the part,
- (d) the statutory period referred to in section 4B(2) has not expired, and
- (e) the display is authorised under subsection (9),

subsection (1) does not apply as respects the public display of the body or, as the case may be, the part of the body, if the condition in subsection (6) is met.

(6) The condition is that where the anatomical examination is—

- (a) in pursuance of a request under section 4(1), that request also includes permission for public display (and there is no reason to believe that permission was withdrawn), or
- (b) in pursuance of an authority under section 4A(1), that authorisation also includes authority for public display.

(7) Where—

- (a) a person is authorised under section 5(5) to have possession of a part of a body,
- (b) the part is a part of a body which has been used outwith Scotland for anatomical examination or examination which has the characteristics of anatomical examination,
- (c) the part was removed from the body during the course of that examination, and
- (d) the display is authorised under subsection (9),

subsection (1) does not apply as respects the public display of the part.

(8) Where—

- (a) a person is authorised under section 5(5) to have possession of a body,
- (b) the body has been used outwith Scotland for anatomical examination or examination which has the characteristics of anatomical examination,
- (c) the body was not imported for use for anatomical examination in Scotland; and is not so used at any time, and
- (d) the display is authorised under subsection (9),

subsection (1) does not apply as respects the public display of the body.

(9) If the Scottish Ministers think it desirable to do so in the interests of education, training or research, they may grant a licence to a person to publicly display the body or, as the case may be, the part, and a person is authorised under this subsection to so display a body or a part of a body if, at the time of the display he is licensed under this subsection.

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- (10) No person, whether the holder of a licence granted under subsection (9) or not, may publicly display a body or a part of a body while—
- (a) any procedure in relation to an anatomical examination, or
  - (b) any similar procedure,
- is being carried out.
- (11) In subsection (10)(a) the reference to “procedure” includes dissection, removal and implantation.
- (12) A person to whom a licence has been granted under subsection (9) shall—
- (a) compile such records as may be specified by regulations made by the Scottish Ministers, and
  - (b) retain for such period as may be so specified any records compiled in accordance with paragraph (a).
- (13) For the purposes of this section, public display, in relation to the body or part of the body of a deceased person (including an anatomical specimen) does not include—
- (a) display of the body or part for the purposes of enabling people to pay their final respects to the deceased or which is incidental to the deceased's funeral,
  - (b) use of the body or part for the purpose of public display at a place of public religious worship, or at a place associated with such a place, if there is a connection between the body or, as the case may be, the part and the religious worship which takes place at the place in question.
- (14) The power to make an order under subsection (2) or regulations under subsection (12)(a) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”.
- (10) In section 7 (licences: general provisions)—
- (a) in subsection (7), after the word “Act” insert “, subject to subsection (7A),”;
  - (b) after that subsection, insert—
 

“(7A) Subsection (7) does not apply in relation to a decision of the Scottish Ministers to revoke a licence under this Act if the Ministers consider that there would be a risk to public health if the requirements of that subsection were to apply, and where the Scottish Ministers consider that to be the case they shall notify the person to whom the licence was granted of the revocation and that for the reasons mentioned in this subsection the revocation takes effect on the date specified in the notification.”;
  - (c) in subsection (8), after the word “(7)” insert “ or (7A) ”.
- (11) After that section, insert—

**“7A Appeal to sheriff principal against licence decision**

- (1) This section applies to a decision of the Scottish Ministers under—
- (a) section 3(1) refusing to grant a licence for the use of premises for carrying out anatomical examinations,
  - (b) section 3(2) refusing to grant a licence to a person to—



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- (i) carry out anatomical examinations, or
    - (ii) have possession of anatomical specimens,
  - (c) section 5(5) refusing to grant a licence to a person to have possession of a body or a part of a body,
  - (d) section 6A(9) refusing to grant a licence to a person to publicly display a body or a part of a body,
  - (e) section 7(5) granting a licence subject to conditions,
  - (f) section 7(6)(a) revoking a licence.
- (2) The—
  - (a) applicant, in the case of a decision referred to in subsection (1)(a), (b), (c), (d) or (e), and
  - (b) person to whom the licence was granted, in the case of a decision referred to in subsection (1)(f),may, before the expiry of the period of 21 days beginning with the day the decision is made, appeal under this section to the sheriff principal against the decision on one or more of the grounds mentioned in subsection (3).
- (3) The grounds are that the Scottish Ministers in arriving at their decision—
  - (a) erred in law,
  - (b) based their decision on any incorrect material fact,
  - (c) acted contrary to natural justice, or
  - (d) exercised their discretion in an unreasonable manner.
- (4) An appeal to the sheriff principal under this section is to be—
  - (a) where the appeal is against a decision under—
    - (i) section 3(1),
    - (ii) section 7(5) or 7(6)(a) in respect of a licence for the use of premises,to the sheriff principal of the sheriffdom in which the premises are situated;
  - (b) in any other case, to—
    - (i) the sheriff principal of the sheriffdom in which the appellant resides, or
    - (ii) the sheriff principal of the Sheriffdom of Lothian and Borders at Edinburgh.
- (5) In allowing an appeal under this section, the sheriff principal—
  - (a) shall set aside the decision, and
  - (b) shall—
    - (i) if he considers that he can do so on the facts considered to be established by the Scottish Ministers, substitute his own decision, or
    - (ii) remit the case to the Scottish Ministers for consideration anew.”.
- (12) In section 8(1) (regulations)—
  - (a) in paragraph (a), after the word “4” insert “ or section 4A ”;
  - (b) in paragraph (b)—
    - (i) after the word “to”, at the first place it occurs, insert “ bodies or ”;

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- (ii) for the words “lawful by virtue of section 6” substitute “ authorised under section 5(5) ”;
- (c) after that paragraph, insert “,
  - (c) in relation to bodies or parts of bodies the display of which is authorised under section 6A(9) with a view to securing that the bodies or parts are decently cared for and displayed with appropriate respect”.

(13) After that section, insert—

**“8A Code of practice**

- (1) The Scottish Ministers may prepare a code of practice for the purpose of—
  - (a) giving practical guidance to persons—
    - (i) licensed under section 3(2) to carry out anatomical examinations or to have possession of anatomical specimens,
    - (ii) authorised under section 5(5) to have possession of a body or parts of a body,
    - (iii) authorised under section 6A(9) to publicly display a body or parts of a body, and
  - (b) laying down standards expected in relation to such activities.
- (2) A code of practice prepared under subsection (1) may not be given effect unless and until it has been—
  - (a) confirmed by order, and
  - (b) brought into force on a day appointed by order,
 by the Scottish Ministers.
- (3) The Scottish Ministers shall, before confirming a code of practice by order under subsection (2)(a)—
  - (a) consult such persons as they see fit, and
  - (b) lay a draft of the code before the Scottish Parliament.
- (4) The Scottish Ministers shall publish a code of practice so confirmed in such way as, in their opinion, is likely to bring it to the attention of those interested in it.
- (5) The Scottish Ministers shall—
  - (a) keep a code of practice confirmed by order under subsection (2)(a) under review, and
  - (b) prepare a revised code of practice where appropriate.
- (6) Subsections (2) to (4) apply to a revised code of practice prepared under subsection (5)(b) as they apply to a code of practice prepared under subsection (1).
- (7) Any person licensed or authorised as mentioned in subsection (1)(a) shall have regard to the provisions of a code of practice published under subsection (4) for the time being in force (so far as the provisions are applicable to the activity the person is licensed or, as the case may be, authorised to carry out); but a failure on the part of any such person to observe any provision of such code of practice shall not of itself render the person liable to any proceedings.

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- (8) The Scottish Ministers may, in carrying out their functions under this Act with respect to licences, 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), 5(5) or 6A(9).
- (9) The power to make an order under subsection (2)(a) or (b) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”.
- (14) In section 9(1) (inspectors of anatomy), the words “Her Majesty's Inspector of Anatomy or (if the terms of the appointment so provide)” are repealed.
- (15) In section 10 (inspector's power to inspect records and premises)—
- (a) in subsection (1), for the words “or 5(6)” substitute “, 5(6) or 6A(12)”;
  - (b) in subsection (2)(a), for the words “section 11(1)(a)” substitute “ section 11(1) ”;
  - (c) subsection (5) is repealed.
- (16) In section 11 (offences)—
- (a) in subsection (1)—
    - (i) the word “or” following paragraph (b) is repealed;
    - (ii) after paragraph (c), insert “or
    - (d) publicly displays a body or part of a body in contravention of section 6A(1) or (10),”;
  - (b) in subsection (5), in each of paragraphs (a), (b) and (c) for the words “or 5(6)” substitute “, 5(6) or 6A(12) ”;
  - (c) in subsection (9), after the word “director,” insert “ member, ”;
  - (d) after that subsection, insert—
- “(9A) Where an offence under this section or against regulations under section 8 is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a partner or a person who was purporting to act in such capacity, that person, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (9B) Where an offence under this section or against regulations under section 8 is committed by an unincorporated association other than a Scottish partnership and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person who is concerned in the management or control of the association or a person who was purporting to act in any such capacity, that person, as well as the unincorporated association, is guilty of the offence and liable to be proceeded against and punished accordingly.”.
- (17) Before section 12, insert—

## “11A Interpretation

In this Act—

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“adult” means a person who is 16 years of age or over,  
“imported body” means the body of a deceased person who died outwith Scotland (and whose normal or usual place of residence immediately before his death was outwith Scotland) which is imported into Scotland from a place outside Scotland; and any reference to “imported” shall be construed accordingly.”.

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**Commencement Information**

- I1** S. 53(1)-(5)(7)(a)-(d)(8)(10)(11)(14)-(17) in force at 1.9.2006 by [S.S.I. 2006/251](#), [art. 3](#)
- I2** S. 53(6)(7)(e)(9)(12)(13) in force at 12.5.2006 for specified purposes and 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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