Human Tissue (Scotland) Bill
[AS INTRODUCED]

CONTENTS

Section

PART 1

TRANSPLANTATION ETC.

General functions of the Scottish Ministers

1 Duties of the Scottish Ministers as respects transplantation, donation of body parts etc.
2 Assistance and support

Use of part of body of deceased person for transplantation, research etc.

3 Use of part of body of deceased person for transplantation, research etc.
4 Disapplication of sections 3, 6 to 12 and 14 in certain circumstances
5 Consent by procurator fiscal to removal of part of body
6 Authorisation: adult
7 Authorisation by adult’s nearest relative
8 Existing written request: adult
9 Authorisation: child 12 years of age or over
10 Authorisation as respects child who dies 12 years of age or over by person with parental rights and responsibilities
11 Authorisation as respects child who dies under 12 years of age
12 Removal of part of body of deceased person: further requirements
13 Preservation for transplantation
14 Offences: removal or use of part of body of deceased person for transplantation, research etc.

Restrictions on transplants involving live donor

15 Restrictions on transplants involving live donor

Records, information etc.: removal and use of parts of human bodies for transplantation etc.

16 Records, information etc.: removal and use of parts of human bodies for transplantation etc.

 Trafficking

17 Prohibition of commercial dealings in parts of a human body for transplantation

Summary proceedings for offences under section 15, 16(4) or 17(1) or (2)

18 Summary proceedings for offences under section 15, 16(4) or 17(1) or (2)
PART 2

POST-MORTEM EXAMINATIONS

19 Meaning of post-mortem examination for purposes of Act
20 Disapplication of sections 19 and 22 to 32 as respects procurator fiscal
21 Consent by procurator fiscal to post-mortem examination
22 Requirements for carrying out post-mortem examination
23 Removal during examination and retention of organs and other parts of a body
24 Authorisation of post-mortem examination etc.: adult
25 Authorisation of post-mortem examination etc. by adult’s nominee or nearest relative
26 Authorisation of post-mortem examination etc.: child 12 years of age or over
27 Authorisation of post-mortem examination etc. as respects child 12 years of age or over by nominee or person with parental rights and parental responsibilities
28 Authorisation of post-mortem examination etc. as respects child under 12 years of age
29 Nomination of person under section 25(1) or 27(1): additional provision
30 Post-mortem examination and removal and retention of organs: further requirements
31 Organ or tissue sample removed before day on which section 22 comes into force
32 Offences: post-mortem examinations

PART 3

TISSUE SAMPLE OR ORGANS NO LONGER REQUIRED FOR PROCURATOR FISCAL PURPOSES

33 Tissue sample becoming part of medical records of deceased person
34 Use of tissue sample which has become part of deceased’s medical records
35 Use of organ no longer required for procurator fiscal purposes
36 Notice under section 33(2) or 35(2)(a): further provision
37 Authorisation of use etc. after examination: adult
38 Authorisation of use etc. after examination: adult’s nearest relative
39 Authorisation of use etc. after examination: child 12 years of age or over
40 Authorisation of use etc. after examination: person with parental rights and parental responsibilities for child 12 years of age or over
41 Authorisation of use etc. after examination: person with parental rights and responsibilities for child under 12 years of age
42 Use of tissue sample removed before day on which section 33 comes into force
43 Use of organ removed before day on which section 35 comes into force

PART 4

PARTS 1 TO 3: SUPPLEMENTARY PROVISION

44 Conditions attached to authorisation
45 Nearest relative
46 Witnesses: additional provision
47 Power to prescribe forms and descriptions of persons who may act as a witness

PART 5

AMENDMENT OF THE ANATOMY ACT 1984

48 Amendment of the Anatomy Act 1984
PART 6
MISCELLANEOUS

49 Arrangements by the Scottish Ministers for assistance with functions under section 1, 2, 15(3), 16(2) or 17(3)
50 Power to give effect to Community obligations
51 Bodies corporate etc.

PART 7
GENERAL

52 Ancillary provision
53 Regulations or orders
54 Interpretation
55 Repeals
56 Short title and commencement

Schedule—Repeals
Human Tissue (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision in relation to activities involving human tissue.

PART 1
TRANSPLANTATION ETC.

General functions of the Scottish Ministers

1 Duties of the Scottish Ministers as respects transplantation, donation of body parts etc.
   It is the duty of the Scottish Ministers to—
   (a) promote, support and develop programmes of transplantation;
   (b) promote information and awareness about the donation for transplantation of parts of a human body;
   (c) promote the taking of any necessary measures relating to the quality and safety, storage and use of any such part donated for that purpose.

2 Assistance and support
   (1) The Scottish Ministers may provide assistance and support to any person providing, or proposing to provide, a service relating to transplantation.
   (2) Assistance and support provided under subsection (1) is to be provided on such terms, including terms as to payment, as the Scottish Ministers think fit.
   (3) In this section, “assistance” includes financial assistance.

Use of part of body of deceased person for transplantation, research etc.

3 Use of part of body of deceased person for transplantation, research etc.
   (1) Part of the body of a deceased person may be removed from the body and used, for the purposes of—
       (a) transplantation;
       (b) research;
(c) education or training;
(d) audit,
only if the requirements of subsection (2) are satisfied as respects the part.

(2) The requirements are that—

(a) the removal and use for the purpose in question are authorised in accordance with section 6, 7, 9, 10 or, as the case may be, 11; and
(b) the removal is carried out in accordance with section 12.

4 Disapplication of sections 3, 6 to 12 and 14 in certain circumstances

Sections 3, 6 to 12 and 14 do not apply—

(a) to anything done for the purposes of the functions or under the authority of the procurator fiscal;
(b) in relation to the removal of any part of the body of a deceased person during a post-mortem examination of the body or the subsequent retention and use of the part or in relation to retention and use of a part of a body to which section 31 applies; or
(c) in relation to retention and use of tissue sample to which section 33 or 42 applies or an organ to which section 35 or 43 applies.

5 Consent by procurator fiscal to removal of part of body

(1) Where a person knows, or has reason to believe, that an examination of the body of a deceased person is, or may be, required for the purposes of the functions of the procurator fiscal, the person may not, except with the consent of the procurator fiscal, remove from the body any part of it, or authorise such removal, for a purpose referred to in section 3(1).

(2) For the purposes of subsection (1), consent by the procurator fiscal may be given verbally and if so given is to be confirmed in writing as soon as is reasonably practicable.

6 Authorisation: adult

(1) An adult may authorise the removal and use of a part of the adult’s body after the adult’s death for one or more of the purposes referred to in section 3(1).

(2) Authorisation by virtue of subsection (1)—

(a) must be—
   (i) in writing; or
   (ii) expressed verbally in the presence of 2 witnesses;
(b) may be withdrawn in writing.
7 Authorisation by adult’s nearest relative

(1) If there is in force immediately before an adult’s death no authorisation by the adult by virtue of section 6(1) of removal and use of any part of the adult’s body for transplantation, the nearest relative of the deceased adult may, subject to subsection (4), authorise the removal and use of any part for one or more of the purposes referred to in section 3(1).

(2) If—

(a) there is in force immediately before an adult’s death authorisation by the adult by virtue of section 6(1) of removal and use of a part of the adult’s body for transplantation;

(b) the authorisation does not expressly include removal and use of the part for a particular purpose referred to in paragraphs (b) to (d) of section 3(1),

the nearest relative of the deceased adult may, subject to subsection (4), authorise the removal and use of the part for the particular purpose in question which is not included in the authorisation.

(3) If—

(a) there is in force immediately before an adult’s death authorisation by the adult by virtue of section 6(1) of removal and use of a particular part of the adult’s body for transplantation;

(b) the authorisation does not expressly include removal and use of another particular part,

the nearest relative of the deceased adult may, subject to subsection (4), authorise the removal and use of the other particular part which is not so included for one or more of the purposes referred to in paragraphs (b) to (d) of section 3(1).

(4) The nearest relative may not give authorisation under—

(a) subsection (1) if the relative has actual knowledge that the adult was unwilling for any part of the adult’s body, or the part in question, to be used for transplantation;

(b) subsection (2) if the relative has actual knowledge that the adult was unwilling for the part to be used for the purpose in question;

(c) subsection (3) if the relative has actual knowledge that the adult was unwilling for any other part of the adult’s body or, as the case may be, the other particular part in question, to be used for transplantation.

(5) For the purposes of—

(a) subsection (4)(a), the mere fact that there is no authorisation by the adult in force is not to be regarded as unwillingness by the adult referred to in that subsection;

(b) subsection (4)(b), the mere fact that the authorisation does not include a particular purpose referred to in paragraphs (b) to (d) of section 3(1) is not to be regarded as unwillingness by the adult referred to in that subsection;

(c) subsection (4)(c), the mere fact that there is no authorisation by the adult in force as respects the removal and use of other parts, or the other particular part in question, for transplantation is not to be regarded as unwillingness by the adult referred to in that subsection.

(6) Authorisation by virtue of subsection (1), (2) or (3)—
(a) must be in writing and signed by the nearest relative;
(b) may be withdrawn in writing so signed.

8 Existing written request: adult
A request by an adult that a part of the adult’s body be used after the adult’s death for transplantation, in writing signed by the adult and in force immediately before the coming into force of sections 3 and 6, is to be treated for the purposes of this Part as if it were authorisation by the adult in accordance with section 6(1) (in writing).

9 Authorisation: child 12 years of age or over
(1) A child who is 12 years of age or over may authorise the removal and use of a part of the child’s body after the child’s death for one or more of the purposes referred to in section 3(1).
(2) Authorisation by virtue of subsection (1)—
(a) must be in writing;
(b) may be withdrawn in writing.

10 Authorisation as respects child who dies 12 years of age or over by person with parental rights and responsibilities
(1) If there is in force immediately before the death of a child who died 12 years of age or over no authorisation by the child by virtue of section 9(1) of removal and use of any part of the child’s body for transplantation, a person who, immediately before the death, had parental rights and parental responsibilities in relation to the child may, subject to subsection (4), authorise removal and use of any part for one or more of the purposes referred to in section 3(1).
(2) If—
(a) there is in force immediately before the death of a child who died 12 years of age or over authorisation by the child by virtue of section 9(1) of removal and use of a part of the child’s body for transplantation;
(b) the authorisation does not expressly include removal and use of the part for a particular purpose referred to in paragraphs (b) to (d) of section 3(1),
a person who, immediately before the death, had parental rights and parental responsibilities in relation to the child may, subject to subsection (4), authorise the removal and use of the part for the particular purpose in question which is not included in the authorisation.
(3) If—
(a) there is in force immediately before the child’s death authorisation by the child by virtue of section 9(1) of removal and use of a particular part of the child’s body for transplantation;
(b) the authorisation does not expressly include removal and use of another particular part,
a person who, immediately before the death, had parental rights and parental responsibilities in relation to the child may, subject to subsection (4), authorise the removal and use of the other particular part which is not so included for one or more of the purposes referred to in paragraphs (b) to (d) of section 3(1).

(4) A person may not give authorisation under—

(a) subsection (1) if the person has actual knowledge that the child was unwilling for any part of the child’s body, or the part in question, to be used for transplantation;

(b) subsection (2) if the person has actual knowledge that the child was unwilling for the part to be used for the purpose in question;

(c) subsection (3) if the person has actual knowledge that the child was unwilling for any other part of the child’s body or, as the case may be, the other particular part in question, to be used for transplantation.

(5) For the purposes of—

(a) subsection (4)(a), the mere fact that there is no authorisation by the child in force is not to be regarded as unwillingness by the child referred to in that subsection;

(b) subsection (4)(b), the mere fact that the authorisation by the child does not include a particular purpose referred to in paragraphs (b) to (d) of section 3(1) is not to be regarded as unwillingness by the child referred to in that subsection;

(c) subsection (4)(c), the mere fact that there is no authorisation by the child in force as respects the removal and use of other parts, or the other particular part in question, for transplantation is not to be regarded as unwillingness by the child as referred to in that subsection.

(6) Authorisation by virtue of subsection (1), (2) or (3)—

(a) must be in writing and signed by the person who gives the authorisation in accordance with that subsection;

(b) may be withdrawn in writing signed by the person.

11 Authorisation as respects child who dies under 12 years of age

(1) A person who immediately before the death of a child who died under 12 years of age had parental rights and parental responsibilities in relation to the child may authorise removal and use of a part of the body of the child for one or more of the purposes referred to in section 3(1).

(2) Authorisation by virtue of subsection (1)—

(a) must be in writing and signed by the person who gives the authorisation in accordance with that subsection;

(b) may be withdrawn in writing signed by the person.

12 Removal of part of body of deceased person: further requirements

(1) The removal of a part of the body of a deceased person for any of the purposes referred to in section 3(1) may be carried out only by—

(a) a registered medical practitioner; or
(b) a person authorised to do so in accordance with regulations made by the Scottish Ministers.

(2) Regulations under subsection (1)(b) may in particular provide for a registered medical practitioner to authorise the carrying out of the removal by a person who is not such a practitioner.

(3) The removal of part of the body of a deceased person may not be—

(a) carried out for any of the purposes referred to in section 3(1) unless the person who proposes to carry it out, before doing so, complies with the requirements specified in subsection (4);

(b) authorised, by virtue of regulations under subsection (1)(b), unless the registered medical practitioner who proposes to authorise it, before doing so, complies with those requirements.

(4) The requirements are that the person (and, where a registered medical practitioner proposes to authorise the carrying out of the removal by virtue of regulations under subsection (1)(b), the practitioner) must be satisfied—

(a) either—

(i) by personal examination of the body, that life is extinct; or

(ii) that another registered medical practitioner, by such personal examination, is so satisfied;

(b) that, if the consent of the procurator fiscal to the carrying out of the removal is required by section 5(1), the consent has been given; and

(c) that the removal is authorised in accordance with section 6, 7, 9, 10 or, as the case may be, 11.

(5) For the purposes of subsection (4)(c), the person or, as the case may be, the registered medical practitioner is entitled to be satisfied that the removal is authorised in accordance with the section in question if—

(a) the person or, as the case may be, the practitioner has no reason to believe that the authorisation was not so given or that it was subsequently withdrawn;

(b) in the case of authorisation by virtue of section 6(1) which is in writing, it bears—

(i) to be as respects the deceased adult;

(ii) to authorise removal of the part for the purpose in question;

(iii) to be by the adult;

(c) in the case of authorisation by virtue of section 6(1) which is expressed verbally, there is what the person or, as the case may be, the medical practitioner, considers to be an appropriate record of the authorisation and the authorisation bears from the record—

(i) to be as respects the deceased adult;

(ii) to authorise removal of the part for the purpose in question;

(iii) to have been expressed verbally in the presence of 2 witnesses, each of whom was an adult when witnessing and was present when the other witnessed the authorisation;

(d) in the case of authorisation by virtue of section 7(1), it bears—
Part 1—Transplantation etc.

(i) to be in writing;
(ii) to be as respects the deceased adult;
(iii) to authorise removal of the part for the purpose in question;
(iv) to be by, and signed by, the nearest relative of the deceased adult;

(e) in the case of authorisation by virtue of section 7(2), there bears to be authorisation by the adult as referred to in paragraphs (a) and (b) of that section, and the authorisation by virtue of that section bears—
(i) to be in writing;
(ii) to be as respects the deceased adult;
(iii) to authorise removal of the part for the purpose in question;
(iv) to be by, and signed by, the nearest relative of the deceased adult;
(v) to be as respects a part which is included in the authorisation by the adult and for a purpose referred to in paragraphs (b) to (d) of section 3(1) which is not included in the authorisation by the adult;

(f) in the case of authorisation by virtue of section 7(3), there bears to be authorisation by the adult as referred to in paragraphs (a) and (b) of that section, and the authorisation by virtue of that section bears—
(i) to be in writing;
(ii) to be as respects the deceased adult;
(iii) to authorise removal of the part for the purpose in question;
(iv) to be by, and signed by, the nearest relative of the deceased adult;
(v) to be as respects a part which is not included in the authorisation by the adult and for a purpose referred to in paragraphs (b) to (d) of section 3(1);

(g) in the case of authorisation by virtue of section 9(1), it bears—
(i) to be in writing;
(ii) to be as respects the deceased child;
(iii) to authorise removal of the part for the purpose in question;
(iv) to be by the child while 12 years of age or over;

(h) in the case of authorisation by virtue of section 10(1), it bears—
(i) to be in writing;
(ii) to be as respects the deceased child (who died 12 years of age or over);
(iii) to authorise removal of the part for the purpose in question;
(iv) to be by a person who, immediately before the child’s death, had parental rights and parental responsibilities in relation to the child and signed by the person;

(i) in the case of authorisation by virtue of section 10(2), there bears to be authorisation by the child as referred to in paragraphs (a) and (b) of that section and the authorisation by virtue of that section bears—
(i) to be in writing;
(ii) to be as respects the deceased child (who died 12 years of age or over);

(iii) to authorise removal of the part for the purpose in question;

(iv) to be by a person who, immediately before the child’s death, had parental rights and parental responsibilities in relation to the child and signed by the person;

(v) to be as respects a part which is included in the authorisation by the child and for a purpose referred to in paragraphs (b) to (d) of section 3(1) which is not included in the authorisation by the child;

(j) in the case of authorisation by virtue of section 10(3), there bears to be authorisation by the child as referred to in paragraphs (a) and (b) of that section and the authorisation by virtue of that section bears—

(i) to be in writing;

(ii) to be as respects the deceased child (who died 12 years of age or over);

(iii) to authorise removal of the part for the purpose in question;

(iv) to be by a person who, immediately before the child’s death, had parental rights and parental responsibilities in relation to the child and signed by the person;

(v) to be as respects a part which is not included in the authorisation by the child and for a purpose referred to in paragraphs (b) to (d) of section 3(1);

(k) in the case of authorisation by virtue of section 11(1), it bears—

(i) to be in writing;

(ii) to be as respects the deceased child (who died under 12 years of age);

(iii) to authorise removal of the part for the purpose in question;

(iv) to be by a person who, immediately before the child’s death, had parental rights and parental responsibilities in relation to the child and signed by the person.

13 Preservation for transplantation

(1) Where part of the body of a deceased person lying in premises to which this section applies is or may be suitable for use for transplantation, the managers of the premises may—

(a) take steps for the purpose of preserving the part for use for transplantation;

(b) retain the body for that purpose.

(2) Authority under subsection (1)(a) extends only to—

(a) the taking of the minimum steps necessary for the purpose mentioned in that paragraph;

(b) the use of the least invasive procedure.

(3) Authority under subsection (1)—

(a) extends to any person authorised to act under the authority by the managers of the premises in question;
(b) ceases to apply once it has been established that authorisation for removal of the part for transplantation has not been, and will not be, given.

(4) The premises to which this section applies are—

(a) a health service hospital;

(b) premises in which a registered independent health care service is provided.

(5) In this section—

“Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29);

“health service hospital” has the meaning given by section 108(1) of that Act;

“managers” means—

(a) where the body is lying in a health service hospital, the Health Board or Special Health Board responsible for the administration of the hospital;

(b) where the body is lying in premises in which a registered independent health care service is provided, the person providing the service;

“registered independent health care service” means an independent health care service (as defined in section 2(5) of the Regulation of Care (Scotland) Act 2001 (asp 8)) registered under Part 1 of that Act;

“Special Health Board” means a board constituted by order under section 2(1)(b) of the National Health Service (Scotland) Act 1978 (c.29).

14 Offences: removal or use of part of body of deceased person for transplantation, research etc.

(1) A person commits an offence if the person removes or uses a part of the body of a deceased person for any of the purposes referred to in section 3(1) and—

(a) the removal and use for the purpose in question are not authorised in accordance with section 6, 7, 9, 10 or, as the case may be, 11; or

(b) any of the requirements in section 12(1) or (4)(a) is not satisfied as respects the part.

(2) Where a person is charged with an offence under subsection (1) it is a defence for the person to show that, at the time of carrying out the activity, the person reasonably believed that the removal and use were authorised as referred to in paragraph (a) of that subsection or, as the case may be, the requirements in question referred to in paragraph (b) of that subsection were satisfied as respects the part.

(3) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to—

(i) imprisonment for a term not exceeding 12 months;

(ii) a fine not exceeding level 5 on the standard scale; or

(iii) both;

(b) on conviction on indictment, to—

(i) imprisonment for a term not exceeding 3 years;

(ii) a fine not exceeding level 5 on the standard scale; or
Restrictions on transplants involving live donor

15 Restrictions on transplants involving live donor

(1) Subject to subsections (3) and (5), a person commits an offence—

(a) if—

(i) the person removes an organ, part of an organ, or any tissue which is not regenerative tissue, from the body of a living child intending that it be used for transplantation; and

(ii) when the person removes the organ, part or tissue, the person knows, or might reasonably be expected to know, that the other person from whose body the person removes it is a living child; or

(b) if—

(i) the person removes an organ or part of an organ from the body of a living adult intending that it be used for transplantation; and

(ii) when the person removes the organ or part, the person knows, or might reasonably be expected to know, that the adult from whose body the person removes it is alive.

(2) Subject to subsections (3) and (5), a person commits an offence—

(a) if—

(i) the person uses for transplantation an organ, part of an organ or any tissue which is not regenerative tissue, which has come from the body of a living child; and

(ii) when the person does so, the person knows, or might reasonably be expected to know, that it has come from the body of a living child; or

(b) if—

(i) the person uses for transplantation an organ or part of an organ which has come from the body of a living adult; and

(ii) when the person does so, the person knows, or might reasonably be expected to know, that it has come from the body of a living adult.

(3) The Scottish Ministers may by regulations provide that subsection (1)(b) or (2)(b) does not apply in a case where—

(a) the Ministers are satisfied that—

(i) no reward has been or is to be given in contravention of section 17; and

(ii) such other conditions as may be specified in the regulations are satisfied; and

(b) such other requirements as may be specified in the regulations are complied with.

(4) Regulations under subsection (3) must include provision as to appeals against decisions made in relation to matters which fall to be decided under the regulations.
(5) Where under subsection (3) an exception from subsection (1)(b) or (2)(b) is in force, a person does not commit an offence under subsection (1)(b) or, as the case may be, (2)(b) if the person reasonably believes that the exception applies.

(6) A person guilty of an offence under this section is liable on summary conviction to—

(a) imprisonment for a term not exceeding 12 months;

(b) a fine not exceeding level 5 on the standard scale; or

(c) both.

(7) In this section—

“regenerative tissue” means tissue which is able to be replaced in the body of a living person by natural processes if the tissue is injured or removed;

“reward” means any description of financial or other material advantage, but does not include any payment in money or money’s worth for defraying or reimbursing—

(a) the cost of removing, transporting, preparing, preserving or storing the organ (or part) or tissue;

(b) any liability incurred in respect of expenses incurred by a third party in, or in connection with, any of the activities referred to in paragraph (a);

(c) any expenses or loss of earnings incurred by the person from whose body the organ (or part) or tissue comes so far as reasonably and directly attributable to the person’s supplying it from the person’s body.

Records, information etc.: removal and use of parts of human bodies for transplantation etc.

16 Records, information etc.: removal and use of parts of human bodies for transplantation etc.

(1) The Scottish Ministers may by regulations make provision requiring such persons (or descriptions of persons) as may be specified in the regulations to—

(a) maintain in accordance with the regulations records in connection with the removal of parts from human bodies for transplantation and the use or retention, for any other purpose referred to in section 3(1), of parts removed from bodies of deceased persons;

(b) provide to the Scottish Ministers, or to such authority as may be specified in the regulations, such information as may be so specified with respect to the removal of parts from human bodies for transplantation, the use or retention for that purpose of parts removed or the use or retention for any other purpose referred to in section 3(1) of parts removed from bodies of deceased persons.

(2) The Scottish Ministers must keep a record of information provided to them in pursuance of regulations made under subsection (1).

(3) Any such authority as may be specified in such regulations must keep a record of information provided to it in pursuance of the regulations.

(4) A person commits an offence if—

(a) the person fails without reasonable excuse to comply with regulations under subsection (1); or
(b) in purported compliance with such regulations, the person knowingly or recklessly supplies information which is false or misleading in a material respect.

(5) A person guilty of an offence under—

(a) subsection (4)(a) is liable on summary conviction to a fine not exceeding level 3 on the standard scale;

(b) subsection (4)(b) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Trafficicking**

17 **Prohibition of commercial dealings in parts of a human body for transplantation**

10 (1) A person commits an offence if the person—

(a) gives or receives a reward for the supply of, or for an offer to supply, any part of a human body for transplantation;

(b) seeks to find a person willing to supply any part of a human body for transplantation for reward;

(c) offers to supply any part of a human body for transplantation for reward;

(d) initiates or negotiates an arrangement involving the giving of a reward for the supply of, or for an offer to supply, any part of a human body for transplantation;

(e) takes part in the management or control of a body corporate or a group of persons whose activities consist of or include the initiation or negotiation of such arrangements.

15 (2) Without prejudice to subsection (1)(b) and (c), a person commits an offence if the person causes to be published or distributed, or knowingly publishes or distributes, an advertisement—

(a) inviting persons to supply, or offering to supply, any part of a human body for transplantation for reward; or

(b) indicating that the advertiser is willing to initiate or negotiate an arrangement referred to in subsection (1)(d).

17 (3) A person who engages in an activity to which subsection (1) or (2) applies does not commit an offence under that subsection if the person is designated by the Scottish Ministers for the purposes of this subsection as a person who may lawfully engage in the activity.

19 (4) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to—

(i) imprisonment for a term not exceeding 12 months;

(ii) a fine not exceeding level 5 on the standard scale; or

(iii) both;

(b) on conviction on indictment, to—

(i) imprisonment for a term not exceeding 3 years;

(ii) a fine not exceeding level 5 on the standard scale; or

(iii) both.
(5) A person guilty of an offence under subsection (2) is liable on summary conviction to—
(a) imprisonment for a term not exceeding 12 months;
(b) a fine not exceeding level 5 on the standard scale; or
(c) both.

(6) In this section—
“advertisement” includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons;
“reward” has the same meaning as in section 15.

Summary proceedings for offences under section 15, 16(4) or 17(1) or (2)

(1) Summary proceedings in pursuance of section 15, 16(4) or 17(1) or (2) may be commenced at any time within the period of 6 months from the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to the Lord Advocate’s knowledge.

(2) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (c.46) (date of commencement of summary proceedings) has effect for the purposes of subsection (1) as it has effect for the purposes of that section.

(3) For the purposes of subsection (1), a certificate of the Lord Advocate as to the date on which the evidence in question came to the Lord Advocate’s knowledge is conclusive evidence of the date on which it did so.

PART 2
POST-MORTEM EXAMINATIONS

Meaning of post-mortem examination for purposes of Act

In this Act, “post-mortem examination” means examination of the body of a deceased person involving its dissection and the removal of organs, tissue sample, blood (or any material derived from blood) or other body fluid which is carried out for any or all of the following purposes—
(a) providing information about or confirming the cause of death;
(b) investigating the effect and efficacy of any medical or surgical intervention carried out on the person;
(c) obtaining information which may be relevant to the health of any other person (including a future person);
(d) audit, education, training or research.

Disapplication of sections 19 and 22 to 32 as respects procurator fiscal

Sections 19 and 22 to 32 do not apply to anything done for the purposes of the functions or under the authority of the procurator fiscal.
21 Consent by procurator fiscal to post-mortem examination

(1) Where a person knows, or has reason to believe, that an examination of the body of a deceased person is, or may be, required for the purposes of the functions of the procurator fiscal, the person may not, except with the consent of the procurator fiscal, carry out a post-mortem examination of the body.

(2) For the purposes of subsection (1), consent by the procurator fiscal may be given verbally and if so given is to be confirmed in writing as soon as is reasonably practicable.

22 Requirements for carrying out post-mortem examination

A post-mortem examination may be carried out only if—

(a) it is authorised in accordance with section 24, 25, 26, 27 or, as the case may be, 28; and

(b) the requirements of section 30 are satisfied.

23 Removal during examination and retention of organs and other parts of a body

(1) Subject to section 21 and subsection (2), any part of the body of a deceased person mentioned in subsection (5) may, by virtue of the authorisation for the post-mortem examination of the body, be—

(a) removed from the body during the post-mortem examination for the purposes of the examination;

(b) retained and used thereafter for any of those purposes.

(2) An organ may be—

(a) removed, for the purposes of audit, education, training or research, from the body of a deceased person during a post-mortem examination of the body only if the removal for the purpose in question;

(b) retained and used thereafter for any of those purposes only if the retention for the purpose in question, is authorised in accordance with section 24, 25, 26, 27 or, as the case may be, 28.

(3) Any part of the body of a deceased person (other than an organ) which is removed from the body during the post-mortem examination by virtue of the authorisation referred to in subsection (1) forms part of the medical records of the deceased person.

(4) Where an organ is removed from the body of a deceased person during the post-mortem examination of the body (whether by virtue of the authorisation referred to in subsection (1) or (2)), samples—

(a) may, by virtue of the authorisation, be taken from the organ; and

(b) if taken, form part of the medical records of the deceased person.

(5) The parts of the body referred to in subsection (1) are—

(a) an organ;

(b) tissue sample;

(c) blood, or any material derived from blood;

(d) other body fluid.
Part 2—Post-mortem examinations

(6) A part of the body of a deceased person which is not mentioned in subsection (5) may not be removed from the body during a post-mortem examination of the body.

24  Authorisation of post-mortem examination etc.: adult

(1) An adult may authorise—

(a) a post-mortem examination of the adult’s body after the adult’s death;

(b) the removal from the body during the post-mortem examination of an organ for one or more of the purposes referred to in section 23(2)(a);

(c) the retention and use of an organ after the post-mortem examination for one or more of such purposes.

(2) Authorisation by virtue of subsection (1) must be either—

(a) in writing and signed by the adult; or

(b) expressed verbally in the presence of 2 witnesses.

(3) Authorisation by virtue of subsection (1) which is—

(a) in writing and signed may be withdrawn in writing signed by the adult;

(b) expressed verbally in the presence of 2 witnesses may be withdrawn—

(i) in writing signed by the adult; or

(ii) verbally by the adult in the presence of 2 witnesses.

25  Authorisation of post-mortem examination etc. by adult’s nominee or nearest relative

(1) An adult may nominate one or more persons to represent the adult after the adult’s death as respects authorising in relation to the deceased adult one or more of the matters referred to in section 24(1).

(2) The nearest relative of a deceased adult may authorise one or more of the matters referred to in that section in relation to the deceased adult if there is in force immediately before the adult’s death no authorisation by the adult by virtue of that section of any of the matters referred to in it and no nomination by the adult in accordance with subsection (1).

(3) Where an adult has nominated a person by virtue of subsection (1), the nomination is to be disregarded if—

(a) no one is able to give authorisation under it; or

(b) it is not reasonably practicable to communicate with the person in the time available,

and where the nomination falls under this subsection to be disregarded, subsection (2) applies as if there were in force immediately before the adult’s death no such nomination by the adult.

(4) Authorisation by a person nominated by virtue of subsection (1) must be in writing signed by the person and witnessed by one witness (who must not be so nominated).

(5) Authorisation by virtue of subsection (2) must be in writing signed by the nearest relative and witnessed by one witness.

(6) Authorisation—
(a) by a person nominated by virtue of subsection (1);  
(b) by virtue of subsection (2),

must state that the person giving the authorisation has no actual knowledge that the adult was unwilling for a post-mortem examination to be carried out and, where the authorisation is of an activity referred to in section 24(1)(b) or (c), for the activity in question to be carried out (for the purpose in question).

(7) Authorisation by a person nominated by virtue of subsection (1) may be withdrawn in writing signed by the person and witnessed by one witness (who must not be so nominated).

(8) Authorisation by virtue of subsection (2) may be withdrawn in writing signed by the person and witnessed by one witness.

26 Authorisation of post-mortem examination etc.: child 12 years of age or over

(1) A child who is 12 years of age or over may authorise—

(a) a post-mortem examination of the deceased child’s body after the child’s death;

(b) the removal from the body during the post-mortem examination of an organ for one or more of the purposes referred to in section 23(2)(a);

(c) the retention and use of an organ after the post-mortem examination for one or more of such purposes.

(2) Authorisation by virtue of subsection (1)—

(a) must be in writing signed by the child and witnessed by 2 witnesses;

(b) may be withdrawn in writing signed by the child.

27 Authorisation of post-mortem examination etc. as respects child 12 years of age or over by nominee or person with parental rights and parental responsibilities

(1) A child who is 12 years of age or over may nominate one or more persons to represent the child after the child’s death as respects authorising in relation to the deceased child one or more of the matters referred to in section 26(1).

(2) A person who immediately before the death of a child who died 12 years of age or over had parental rights and parental responsibilities in relation to the child may authorise one or more of the matters referred to in that section in relation to the deceased child if there is in force immediately before the death no authorisation by the child by virtue of that section of any of the matters referred to in it and no nomination by the child in accordance with subsection (1).

(3) Where a child who died 12 years of age or over has nominated a person by virtue of subsection (1), the nomination is to be disregarded if—

(a) no one is able to give authorisation under it; or

(b) it is not reasonably practicable to communicate with the person in the time available,

and where the nomination falls under this subsection to be disregarded, subsection (2) applies as if there were in force immediately before the child’s death no such nomination by the child.
(4) Authorisation by a person nominated by virtue of subsection (1) must be in writing signed by the person and witnessed by 2 witnesses (who must not be so nominated); 

(5) Authorisation by virtue of subsection (2) must be in writing signed by the person who gives the authorisation in accordance with that subsection and witnessed by 2 witnesses. 

(6) Authorisation—
   (a) by a person nominated by virtue of subsection (1); 
   (b) by virtue of subsection (2), 

must state that the person giving the authorisation has no actual knowledge that the child was unwilling for a post-mortem examination to be carried out and, where the authorisation is of an activity referred to in section 26(1)(b) or (c), for the activity in question to be carried out (for the purpose in question). 

(7) Authorisation by a person nominated in accordance with subsection (1) may be withdrawn in writing signed by the person and witnessed by 2 witnesses (who must not be so nominated). 

(8) Authorisation by virtue of subsection (2) may be withdrawn in writing signed by the person who gave the authorisation in accordance with that subsection and witnessed by 2 witnesses. 

**28 Authorisation of post-mortem examination etc. as respects child under 12 years of age**

(1) A person who immediately before the death of a child who died under 12 years of age had parental rights and parental responsibilities in relation to the child may authorise one or more of the matters referred to in section 26(1) as respects the deceased child. 

(2) Authorisation by virtue of subsection (1)—
   (a) must be in writing signed by the person who gives the authorisation in accordance with that subsection and witnessed by 2 witnesses; 
   (b) may be withdrawn in writing so signed and witnessed by one witness. 

**29 Nomination of person under section 25(1) or 27(1): additional provision**

(1) Nomination by virtue of—
   (a) section 25(1)—
       (i) must be in writing signed by the adult; 
       (ii) may be withdrawn in writing signed by the adult, 

the presence of one witness (who is not so nominated); 

(b) section 27(1)—
       (i) must be in writing signed by the child; 
       (ii) may be withdrawn in writing signed by the child, 

in the presence of one witness (who is not so nominated). 

(2) A person nominated by virtue of section 25(1) or 27(1)—
   (a) may not act under the nomination if not an adult; 
   (b) may renounce the nomination.
(3) Where more than one person is so nominated, authorisation by virtue of the nomination may be given by any one of them or by all of them acting jointly.

30 Post-mortem examination and removal and retention of organs: further requirements

(1) An activity mentioned in subsection (2) may not be carried out unless the person who proposes to carry it out is satisfied before doing so—

(a) that the activity is authorised in accordance with section 24, 25, 26, 27 or, as the case may be, 28; and

(b) as respects the carrying out of a post-mortem examination that, if the consent of the procurator fiscal to carrying it out is required by section 21(1), the consent has been given.

(2) The activities are—

(a) a post-mortem examination;

(b) removal of an organ during the examination for a purpose referred to in section 23(2)(a);

(c) retention and use of an organ for such a purpose after removal.

(3) For the purposes of subsection (1)(a), the person is entitled to be satisfied that the activity is authorised in accordance with the section in question if—

(a) the person has no reason to believe either that the authorisation was not so given or that it was subsequently withdrawn;

(b) in the case of authorisation by virtue of section 24(1) which is in writing, it bears—

(i) to be as respects the deceased adult;

(ii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);

(iii) to be by, and signed by, the adult;

(c) in the case of authorisation by virtue of section 24(1) which is expressed verbally, there is what the person considers to be an appropriate record of the authorisation and the authorisation bears from the record—

(i) to be as respects the deceased adult;

(ii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);

(iii) to have been expressed verbally in the presence of 2 witnesses, each of whom was an adult when witnessing and was present when the other witnessed the authorisation;

(d) in the case of authorisation by a nominee by virtue of section 25(1) or authorisation by virtue of section 25(2), it bears—

(i) to be in writing;

(ii) to be as respects the deceased adult;
(iii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);

(iv) to be by a nominee or the nearest relative of the deceased adult and signed by the nominee or, as the case may be, the nearest relative;

(v) to state that the person who gave the authorisation had when authorising no actual knowledge that the adult was unwilling for a post-mortem examination to be carried out and, where the authorisation bears to be of an activity referred to in subsection (2)(b) or (c), for the activity in question to be carried out (for the purpose in question);

(vi) to be witnessed, and signed, by one witness who was an adult when witnessing;

(vii) if by a nominee by virtue of section 25(1), to state that the nominee was an adult when giving the authorisation;

(e) in the case of authorisation by virtue of section 26(1), it bears—

(i) to be in writing;

(ii) to be as respects the deceased child;

(iii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);

(iv) to be by, and signed by, the child while 12 years of age or over;

(v) to be witnessed, and signed, by 2 witnesses each of whom was an adult when witnessing and was present when the other witnessed the authorisation;

(vi) to contain a statement by, and signed by, each witness that in the opinion of the witness the child understood the effect of the authorisation and was not acting under undue influence in giving it;

(f) in the case of authorisation by a nominee by virtue of section 27(1) or authorisation by virtue of section 27(2), it bears—

(i) to be in writing;

(ii) to be as respects the deceased child (who died 12 years of age or over);

(iii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);

(iv) to be by a nominee of the deceased child or a person who, immediately before the child’s death, had parental rights and parental responsibilities in relation to the child and to be signed by the nominee or, as the case may be, the person;

(v) to state that the person who gave the authorisation had no actual knowledge that the child was unwilling for a post-mortem examination to be carried out and, where the authorisation bears to be of an activity referred to in subsection (2)(b) or (c), for the activity in question to be carried out (for the purpose in question);
(vi) to be witnessed, and signed, by 2 witnesses each of whom was an adult when witnessing and was present when the other witnessed the authorisation;

(vii) if by a nominee by virtue of section 27(1), to state that the nominee was an adult when giving the authorisation;

(g) in the case of authorisation by virtue of section 28(1), it bears—

(i) to be in writing;

(ii) to be as respects the deceased child (who died under 12 years of age);

(iii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);

(iv) to be by a person who, immediately before the child’s death, had parental rights and parental responsibilities in relation to the child and to be signed by the person;

(v) to be witnessed, and signed, by 2 witnesses each of whom was an adult when witnessing and was present when the other witnessed the authorisation.

31 Organ or tissue sample removed before day on which section 22 comes into force

An organ or tissue sample removed from the body of a deceased person during an examination having the characteristics of a post-mortem examination carried out before the day on which section 22 comes into force and held immediately before that day for use for any purpose referred to in paragraphs (a) to (d) of section 19 may be retained and used for any such purpose.

32 Offences: post-mortem examinations

(1) A person commits an offence if—

(a) the person carries out any of the following activities—

(i) a post-mortem examination;

(ii) the removal, for a purpose referred to in section 23(2)(a), of an organ during a post-mortem examination;

(iii) the retention, for such a purpose, of an organ removed during a post-mortem examination; and

(b) the activity is not authorised in accordance with section 24, 25, 26, 27 or, as the case may be, 28.

(2) Where a person is charged with an offence under subsection (1) it is a defence for the person to show that, at the time of carrying out the activity, the person reasonably believed that the activity was authorised in accordance with section 24, 25, 26, 27 or, as the case may be, 28.

(3) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to—

(i) imprisonment for a term not exceeding 12 months;
(ii) a fine not exceeding level 5 on the standard scale; or
(iii) both;

(b) on conviction on indictment, to—
(i) imprisonment for a term not exceeding 3 years;
(ii) a fine not exceeding level 5 on the standard scale; or
(iii) both.

PART 3

TISSUE SAMPLE OR ORGANS NO LONGER REQUIRED FOR PROCURATOR FISCAL PURPOSES

33 Tissue sample becoming part of medical records of deceased person

(1) This section applies to tissue sample removed from the body of a deceased person (or from an organ which was removed from the body) during an examination of the body carried out on or after the day on which this section comes into force for the purposes of the functions, or under the authority, of the procurator fiscal.

(2) If the manager of the establishment in which an examination referred to in subsection (1) was carried out receives notice in writing from the procurator fiscal that tissue sample specified in the notice and removed from the body of a deceased person so specified is no longer required for the purposes of the functions of the procurator fiscal, on the date of the notice the tissue sample becomes, and accordingly falls to be retained as, part of the medical records of the deceased person.

34 Use of tissue sample which has become part of deceased’s medical records

Where, by virtue of notice under section 33(2), tissue sample becomes part of the medical records of a deceased person, it may—

(a) be used for the purposes of—
(i) providing information about or confirming the cause of death;
(ii) investigating the effect and efficacy of any medical or surgical intervention carried out on the person;
(iii) obtaining information which may be relevant to the health of any other person (including a future person);
(iv) audit;

(b) be used for the purposes of education, training or research, if use for the purpose in question is authorised in accordance with section 37, 38, 39, 40 or, as the case may be, 41.

35 Use of organ no longer required for procurator fiscal purposes

(1) This section applies to an organ removed from the body of a deceased person during an examination of the body carried out on or after the day on which this section comes into force for the purposes of the functions, or under the authority, of the procurator fiscal.

(2) The organ may be retained and used for the purposes of education, training or research if—
(a) the manager of the establishment in which an examination referred to in subsection (1) was carried out receives notice in writing from the procurator fiscal that an organ specified in the notice and removed from the body of a deceased person so specified is no longer required for the purposes of the functions of the procurator fiscal;

(b) the subsequent use of the organ for the purpose in question is authorised in accordance with section 37, 38, 39, 40 or, as the case may be, 41; and

(c) where the purpose in question is research, the research is approved in writing by such person (or persons), or group (or groups) of persons, as the Scottish Ministers may specify by order under this subsection.

36 Notice under section 33(2) or 35(2)(a): further provision

(1) Notice under section 33(2) or 35(2)(a)—

(a) may be—

(i) delivered;

(ii) posted;

(iii) transmitted by electronic means;

(b) if—

(i) posted is presumed to be received on the 3rd day after the day of posting;

(ii) transmitted by electronic means is presumed to be received on the day of transmission.

(2) For the purposes of sections 33(2) and 35(2)(a), the manager of an establishment which is—

(a) a health service hospital, is the Health Board responsible for the administration of the hospital;

(b) a university, is the Head of its Department of Forensic Pathology;

(c) any other establishment, is the person or holder of such post as the Scottish Ministers may specify by order under this subsection.

(3) In subsection (2)(a)—

“Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29);

“health service hospital” has the meaning given by section 108(1) of that Act.

37 Authorisation of use etc. after examination: adult

(1) An adult may authorise—

(a) use of tissue sample removed from the adult’s body after the adult’s death during an examination of the body for the purposes of the functions, or under the authority, of the procurator fiscal;

(b) retention and use of an organ removed from the adult’s body after the adult’s death during such an examination,

for one or more of the purposes referred to in section 34(b).
(2) Authorisation by virtue of subsection (1)—
   (a) must be in writing and signed by the adult;
   (b) may be withdrawn in writing signed by the adult.

38 Authorisation of use etc. after examination: adult’s nearest relative

(1) The nearest relative of a deceased adult may authorise one or more of the matters referred to in section 37(1) in relation to the deceased adult if there is in force immediately before the adult’s death no authorisation by the adult by virtue of that section of any of the matters referred to in it.

(2) Authorisation by virtue of subsection (1) must—
   (a) be in writing signed by the nearest relative and witnessed by one witness;
   (b) state that the person giving the authorisation has no actual knowledge that the adult was unwilling for the matter in question to be authorised (for the purpose in question).

(3) Authorisation by virtue of subsection (1) may be withdrawn in writing signed by the nearest relative and witnessed by one witness.

39 Authorisation of use etc. after examination: child 12 years of age or over

(1) A child who is 12 years of age or over may authorise—
   (a) use of tissue sample removed from the child’s body after the child’s death during an examination of the body for the purposes of the functions, or under the authority, of the procurator fiscal;
   (b) retention and use of an organ removed from the child’s body after the child’s death during such an examination,

for one or more of the purposes referred to in section 34(b).

(2) Authorisation by virtue of subsection (1)—
   (a) must be in writing signed by the child and witnessed by 2 witnesses;
   (b) may be withdrawn in writing signed by the child.

40 Authorisation of use etc. after examination: person with parental rights and parental responsibilities for child 12 years of age or over

(1) A person who immediately before the death of a child who died 12 years of age or over had parental rights and parental responsibilities in relation to the child may authorise one or more of the matters referred to in section 39(1) in relation to the deceased child if there is in force immediately before the death no authorisation by the child by virtue of that section of any of the matters referred to in it.

(2) Authorisation by virtue of subsection (1) must—
   (a) be in writing signed by the person who gives the authorisation in accordance with that subsection and witnessed by 2 witnesses;
   (b) state that the person giving the authorisation has no actual knowledge that the child was unwilling for the matter in question to be authorised (for the purpose in question).
(3) Authorisation by virtue of subsection (1) may be withdrawn in writing signed by the person who gave the authorisation in accordance with that subsection and witnessed by 2 witnesses.

41 Authorisation of use etc. after examination: person with parental rights and responsibilities for child under 12 years of age

(1) A person who immediately before the death of a child who died under 12 years of age had parental rights and parental responsibilities in relation to the child may authorise one or more of the matters referred to in section 39(1) as respects the deceased child.

(2) Authorisation by virtue of subsection (1)—

(a) must be in writing signed by the person who gives the authorisation in accordance with that subsection and witnessed by 2 witnesses;

(b) may be withdrawn in writing so signed and witnessed by one witness.

42 Use of tissue sample removed before day on which section 33 comes into force

Tissue sample removed from the body of a deceased person (or from an organ which was removed from the body) during an examination of the body carried out before the day on which section 33 comes into force for the purposes of the functions, or under the authority, of the procurator fiscal and held immediately before that day for use for any of the purposes referred to in paragraph (b) of section 34 (whether or not held immediately before that day also for the purposes of the functions of the procurator fiscal) may be retained and used for any of the purposes referred to in that paragraph (whether or not it is retained and used also for the purposes of the functions of the procurator fiscal).

43 Use of organ removed before day on which section 35 comes into force

(1) An organ removed from the body of a deceased person during an examination of the body carried out before the day on which section 35 comes into force for the purposes of the functions, or under the authority, of the procurator fiscal and held immediately before that day for use for the purposes of existing approved research (whether or not held immediately before that day also for the purposes of the functions of the procurator fiscal) may be retained and used for the purposes of the existing approved research or for the purposes of education, training or new approved research (whether or not it is retained and used also for the purposes of the functions of the procurator fiscal).

(2) In subsection (1)—

(a) “existing approved research” means research approved before the day on which section 35 comes into force;

(b) “new approved research” means research approved on or after that day, by such persons (or persons), or group (or groups) of persons, as the Scottish Ministers may specify by order under this section.
PART 4

PARTS 1 TO 3: SUPPLEMENTARY PROVISION

44 Conditions attached to authorisation

(1) Authorisation—

(a) by virtue of section 7(1), 10(1) or 11(1) of removal and use of a part of a body for a purpose referred to in section 3(1)(b) to (d);

(b) by a person nominated by virtue of section 25(1) of a matter referred to in section 24(1);

(c) by virtue of section 25(2) of a matter referred to in section 24(1);

(d) by a person nominated by virtue of section 27(1) of a matter referred to in section 26(1);

(e) by virtue of section 27(2) or 28(1) of a matter referred to in section 26(1);

(f) by virtue of section 38(1) of a matter referred to in section 37(1);

(g) by virtue of section 40(1) or 41(1) of a matter referred to in section 39(1);

may be accompanied by a request that the matter authorised is to be carried out subject to conditions specified in the authorisation.

(2) Where a request is made by virtue of subsection (1), the matter must be carried out (in so far as it is reasonably practicable to do so) in accordance with the conditions.

45 Nearest relative

(1) For the purposes of sections 7 and 25, the nearest relative is the person who immediately before the adult’s death was—

(a) the adult’s spouse or civil partner;

(b) living with the adult as husband or wife or in a relationship which had the characteristics of the relationship between civil partners and had been so living for a period of not less than 6 months (or if the adult was in hospital immediately before death had been so living when the adult was admitted to hospital);

(c) the adult’s child;

(d) the adult’s parent;

(e) the adult’s brother or sister;

(f) the adult’s grandparent;

(g) the adult’s grandchild;

(h) the adult’s uncle or aunt;

(i) the adult’s niece or nephew;

(j) a friend of longstanding of the adult.
(2) Subsection (1) applies for the purposes of section 38 as it applies for the purposes of sections 7 and 25 as if after paragraph (j) of that subsection there were inserted (in an additional paragraph) an additional category of person, namely “a person who had a longstanding professional relationship with the adult”; and accordingly references to subsection (1) in subsections (3) to (5) are to be construed as references to subsection (1) (including that subsection as applied and modified by this subsection).

(3) Relationships in different paragraphs of subsection (1) rank in the order of those paragraphs and for the purposes of that subsection (including that subsection as so applied and modified), except paragraph (e)—

(a) a relationship of the half-blood is to be treated as a relationship of the whole blood;

(b) the stepchild of an adult is to be treated as the child of the adult.

(4) Where more than one person falls within a paragraph in subsection (1), authorisation by virtue of the paragraph in question may be given—

(a) if those persons agree in writing signed by them that one of them should be the nearest relative, by that person;

(b) in the absence of such agreement, by the person determined in accordance with the following rules—

(i) brothers and sisters of the whole blood rank before those of the half-blood;

(ii) the elder or eldest, as the case may be, ranks in priority to the others falling within the same paragraph.

(5) For the purposes of subsection (1), a person’s relationship with the adult is to be left out of account if—

(a) the person, immediately before the adult’s death, was under 16 years of age;

(b) the person does not wish or is unable to deal with the issue of authorisation; or

(c) it is not reasonably practicable to communicate with the person in the time available.

46 Witnesses: additional provision

(1) For the purpose of the requirements in sections 25(4), (5), (7) and (8), 26(2)(a), 27(4), (5), (7) and (8), 28(2)(a) and (b), 29(1)(a) and (b), 38(2)(a) and (b), 39(2)(a), 40(2)(a) and (3) and 41(2)(a) and (b) for authorisation, withdrawal of authorisation, nomination or, as the case may be, withdrawal of nomination, in writing, to be witnessed—

(a) a witness (or where 2 witnesses are required each witness)—

(i) must be a witness to both the signature and the content of the writing;

(ii) must be an adult;

(iii) must sign the writing;

(b) any reference to 2 witnesses is a reference to 2 witnesses who are present at the same time.

(2) A witness (or where 2 witnesses are required each witness) to—

(a) authorisation by a child by virtue of section 26(1) or 39(1);
(b) nomination by an adult by virtue of section 25(1) or by a child by virtue of section 27(1),

must at the time of witnessing certify (in writing signed by the witness) that, in the opinion of the witness, the adult or, as the case may be, the child understands the effect of the authorisation or, as the case may be, the nomination and is not acting under undue influence in giving it.

(3) For the purposes of the requirements in sections 6(2)(a)(ii) and 24(2)(b) and (3)(b)(ii) for authorisation or, as the case may be, withdrawal of authorisation, expressed verbally, to be expressed in the presence of 2 witnesses—

(a) each witness—

(i) must be a witness to the verbal expression of the authorisation or, as the case may be, the withdrawal of the authorisation;

(ii) must be an adult;

(b) the reference to 2 witnesses is a reference to 2 witnesses who are present at the same time.

47 Power to prescribe forms and descriptions of persons who may act as a witness

The Scottish Ministers may by regulations prescribe—

(a) the form in which—

(i) authorisation by virtue of section 25(2), 27(2), 28(1), 38(1), 40(1) or 41(1);

(ii) authorisation by a person nominated in accordance with section 25(1) or 27(1),

is to be given;

(b) descriptions of persons who are eligible to act as a witness in accordance with section 24(2)(b), 25(4) or (5), 26(2)(a), 27(4) or (5), 28(2)(a), 38(2)(a), 39(2)(a), 40(2)(a) or 41(2)(a).

PART 5

AMENDMENT OF THE ANATOMY ACT 1984

48 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 part of a body or prosthesis or 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) 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 19 of the Human Tissue (Scotland) Act 2005 (asp 00)”;

(c) 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, 9, 10 or 11 of the Human Tissue (Scotland) Act 2005 (asp 00), that Act (and not this Act) applies to the removal and use of the part, even if the transplantation, research, teaching 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) may be signed by the person and witnessed by one witness who is a witness to both the signature and the content of, and signs, the writing; or

(b) if the person is blind or unable to write, may be signed by another person (the “signatory”) on his behalf and witnessed by one witness 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.

(1C) A person who by virtue of subsection (1A)(b) is a signatory of a request by a person under subsection (1) must be an adult at the time of signing; and a witness to a request by a person under subsection (1) signed by a signatory by virtue of subsection (1A)(b) must be an adult at the time of witnessing.

(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 (6), the words “This subsection applies only to Scotland.” are repealed;

(e) subsections (7) and (8) are repealed;

(f) after subsection (9), insert—

“(9A) This section does not apply to the use of an imported body for anatomical examination.”;

(g) subsections (10) and (11) are repealed.

(6) After that section, insert—

“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 anatomical examination of the imported body, or

(ii) there has been a previous anatomical 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.

Lawful examinations: additional provision

(1) No authority may be given under section 4(2) or 4A 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 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 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 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 an anatomical examination),

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

(b) 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,

(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 an 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) where the part arrives in Scotland on or after the day on which section 48 of the Human Tissue (Scotland) Act 2005 (asp 00) comes into force, no more than 3 years have elapsed beginning with the date of death and ending on the date of its arrival in Scotland,

(v) the part is such that the person from whose body it came cannot be recognised simply by examination of the part, and

(vi) the person with possession is authorised to have possession under subsection (5).”;

(c) in subsection (5), after the word “education” insert “, training”.

(8) In section 6 (lawful possession after examination), for subsection (3) substitute—

“(3) Authority given under section 4A 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 subsection (2), 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) Subsection (1) does not apply as respects the public display of a part of a body if—

(a) a person is authorised under section 5(5) to have possession of the part,

(b) if the part concerned has been removed from a body in the course of anatomical examination carried out in Scotland, possession of the part is lawful by virtue of section 6, and

(c) the display is authorised under subsection (3).

(3) If the Scottish Ministers think it desirable to do so in the interests of teaching or studying, or training in or researching into, the gross structure of the human body, they may grant a licence to a person to publicly display the part, and a person is authorised under this subsection to so display a part of a body if, at the time of the display he is licensed under this subsection.

(4) A person to whom a licence has been granted under subsection (3) 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).

(5) 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)—

(a) includes display by visual image by means of an electronic communications network (within the meaning of section 32(1) of the Communications Act 2003 (c.21));

(b) does not include—

(i) 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;

(ii) 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.

(6) The power to make regulations under subsection (4)(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—

(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 part of a body,

(d) section 6A(3) refusing to grant a licence to a person to publicly display 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,

(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), for the words “lawful by virtue of section 6” substitute “authorised under section 5(5)”;
(c) after that paragraph, insert “;
(c) in relation to parts of bodies the display of which is authorised under section 6A(3) with a view to securing that the 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 parts of a body,

(iii) authorised under section 6A(3) to publicly display 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.
(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(3).

(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(4)”;
(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),”;

(b) in subsection (5), in each of paragraphs (a), (b) and (c) for the words “or 5(6)” substitute “, 5(6) or 6A(4)”;

(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—

“11B Interpretation

In this Act—

“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.”.

**PART 6**

**MISCELLANEOUS**

49 **Arrangements by the Scottish Ministers for assistance with functions under section 1, 2, 15(3), 16(2) or 17(3)**

1. The Scottish Ministers may make arrangements with a public authority in the United Kingdom for the authority to assist them (directly or indirectly) in relation to any of their functions under section 1, 2, 15(3) (except the Ministers’ power under that section to make regulations), 16(2) or 17(3).

2. Assistance under such arrangements may take the form of the carrying out by the authority of the function.

3. Arrangements under this section do not affect the responsibility for the carrying out of the Scottish Ministers’ functions.

50 **Power to give effect to Community obligations**

1. The Scottish Ministers may by regulations amend this Act for the purpose of—

   (a) implementing a relevant obligation or enabling a relevant obligation to be implemented;

   (b) dealing with matters arising out of or related to a relevant obligation.

2. The power under subsection (1) includes—

   (a) (in particular) power to add or omit provisions;

   (b) power consequentially to amend or repeal any other enactment and any instrument made under an enactment.

3. In this section, “relevant obligation” means a Community obligation of the United Kingdom relating to material which consists of, includes or is derived from human cells.

51 **Bodies corporate etc.**

1. Where an offence under section 14(1), 15, 16(4), 17(1) or (2) or 32(1) which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of—

   (a) a director, manager or secretary, member or other similar officer of the body corporate; or

   (b) any person who was purporting to act in any such capacity,

   that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
(2) Where an offence under section 14 (1), 15, 16 (4), 32 (1) or 17 (1) or (2) which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of—

(a) a partner; or

(b) a person who was purporting to act in any such capacity,

that person, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where an offence under section 14 (1), 15, 16 (4), 32 (1) or 17 (1) or (2) which has been committed by an unincorporated association other than a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a person who is concerned in the management or control of the association; or

(b) any 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.

PART 7
GENERAL

52 Ancillary provision
(1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act.

(2) An order under this section may—

(a) make different provision for different purposes,

(b) modify any enactment, instrument or document.

53 Regulations or orders
(1) Any power conferred by this Act on the Scottish Ministers to make regulations or orders—

(a) must be exercised by statutory instrument;

(b) may be exercised so as to make different provision for different purposes.

(2) A statutory instrument containing an order or regulations made under this Act (except an order under section 56 (2)) is, subject to subsection (3), subject to annulment in pursuance of a resolution of the Parliament.

(3) A statutory instrument containing regulations under section 50 or an order under section 52 containing provisions which add to, replace or omit any part of the text of an Act is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

54 Interpretation
(1) In this Act—
“adult” means a person who is 16 years of age or over;
“child” means a person who is under the age of 16 years;
“parental responsibilities” has the meaning given by section 1(3) of the Children (Scotland) Act 1995 (c.36);
“parental rights” has the meaning given by section 2(4) of that Act;
“post-mortem examination” has the meaning given by section 19;
“tissue” includes bone marrow.

(2) In this Act—
(a) references to part of an organ include a cornea;
(b) references to transplantation are to transplantation into a human body; and references to “transplant” or to “transplants” are to be construed accordingly.

55 Repeals
The enactments specified in column 1 of the schedule are repealed to the extent specified in column 2.

56 Short title and commencement
(1) This Act may be cited as the Human Tissue (Scotland) Act 2005.
(2) The provisions of this Act, except this section and sections 47, 53 and 54, come into force on such day as the Scottish Ministers may by order appoint.
(3) Different days may be appointed under subsection (2) for different purposes.
### SCHEDULE

*introduced by section 55*

#### REPEALS

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human Tissue Act 1961 (c.54)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Corneal Tissue Act 1986 (c.18)</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Human Organ Transplants Act 1989 (c.31)</td>
<td>The whole Act.</td>
</tr>
</tbody>
</table>
Human Tissue (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision in relation to activities involving human tissue.

Introduced by: Mr Andy Kerr
On: 3 June 2005
Supported by: Rhona Brankin
Bill type: Executive Bill


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