

CHAPTER 15:01

ANATOMICAL DONATIONS AND POST-MORTEM EXAMINATIONS ACT

Act 33/1976, 22/2001 (s. 4); R.G.N. 889/1978.

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Interpretation.
3. Donation by person of his body or part thereof for certain purposes after his death and consent to postmortem examination.
4. Donation of body of deceased person or part thereof or consent to post-mortem examination by relative or Government medical officer.
5. Persons to whom and purposes for which donation may be made.
6. Provisions relating to donations in terms of section 3 or 4.
7. Donation presumed if identity tag worn by deceased.
8. Authority for use of body or part thereof.
9. Removal of tissue from body of deceased person.
10. Post-mortem examination of body.
11. Removal of tissue at post-mortem examination.
12. Removal of replaceable tissue from bodies of living persons.
13. Removal of tissue, other than replaceable tissue, from bodies of living persons.
14. Acquisition, preservation, use and issue of tissue by authorized institutions.
15. Rights concerning tissue.
16. Exclusion of civil and criminal liability in respect of *bona fide* act of medical practitioner, dental practitioner or magistrate.
17. Sale of tissue for scientific purposes or therapeutic purposes prohibited.
18. Publication of identity of donor or recipient of body or tissue prohibited.
19. Offences and penalties.
20. Regulations.

AN ACT to provide for the donation of human bodies and human tissue for scientific purposes or therapeutic purposes; to provide for the removal, preservation and use of such tissue; to provide for the giving of consent to post-mortem examinations for certain purposes; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement: 1st July, 1978.]

1 Short title

This Act may be cited as the Anatomical Donations and Post-mortem Examinations Act [*Chapter 15:01*].

2 Interpretation

(1) In this Act—

“authorized institution” means an institution authorized by the Minister to receive, acquire, preserve or use the bodies of deceased persons for scientific purposes or therapeutic purposes or to receive, acquire, preserve, use or issue any tissue for such purposes;

“dental practitioner” means a person registered as such in terms of the Health Professions Act [*Chapter 27:19*];
[Definition amended by section 151 of Act 6 of 2000]

“hospital” means any institution approved by the Minister in terms of subsection (2);

“medical practitioner” means a person registered as such in terms of the Health Professions Act [*Chapter 27:19*];
[Definition amended by section 151 of Act 6 of 2000]

“Minister” means the Minister of Health and Child Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“mortuary” means a mortuary attached to a hospital;

“relative”, in relation to any person, means— (a)

the spouse; or

(b) any major child, including an adopted child; or

(c) any parent or guardian; or
(d) any major brother or major sister; of that person;
“replaceable tissue” means blood, skin or other tissue which is replaceable by natural processes of repair;
“scientific purposes” means—

- (a) any medical or dental education or research; or
- (b) the advancement of medical or dental science;

“Secretary” means the Secretary of the Ministry for which the Minister is responsible;

“therapeutic purposes”, in relation to the use of tissue removed from the body of a person, means therapy of, including use in, the body of any other living person;

“tissue” means any human tissue, including any flesh, organ, bone, body fluid or tissue or derivative thereof.

(2) The Minister may, for the purposes of the definition of “hospital”, approve any Government or other institution

3 Donation by person of his body or part thereof for certain purposes after his death and consent to post-mortem examination

(1) Subject to this Act, any person who is competent to make a will may— (a) in his will; or

(b) in any document attested by two competent witnesses; or

(c) orally in the presence of two competent witnesses; donate his body or any part thereof to a person specified in section *five* for use after his death for the purposes specified in that section or consent to a post-mortem examination of his body for the purposes specified in section *ten*.

(2) Any donation made or consent given in terms of subsection (1) may be revoked prior to his death by the person who made it—

(a) in any of the ways referred to in subsection (1) in which a donation may be made or consent may be given, whether it was made or given, as the case may be, in that way or not; and

(b) in the case of a donation or consent made or given in a way referred to in paragraph (a) or (b) of subsection (1), by destruction of the will or document, as the case may be, with the intention of revoking the donation.

(3) In this section—

“competent witness” means a person of or over the age of eighteen years.

4 Donation of body of deceased person or part thereof or consent to post-mortem examination by relative or Government medical officer

Subject to this Act, where there is no donation in terms of section *three* by a person—

(a) any relative of that person may, if he has no reason to believe that there is any contrary indication by that person—

(i) donate, either orally or in writing, the body or any part thereof of that person after his death to a person specified in section *five* for the purposes specified in that section; or

(ii) consent, either orally or in writing, to a post-mortem examination of the body of that person after his death for the purposes specified in section *ten*;

(b) a Government medical officer may, after that person’s death, if after such reasonable inquiry as may be practicable having regard to the exigencies of the circumstances he has no reason to believe that there is any contrary indication by that person or any of his relatives—

(i) donate the body of that person or any part thereof to a person specified in section *five* for the purposes specified in that section; or

(ii) consent to a post-mortem examination of the body for the purposes specified in section *ten*.

5 Persons to whom and purposes for which donation may be made

A donation in terms of section *three* or *four* may be made— (a) to any—

(i) Government hospital; or

(ii) medical or dental school or university engaged in medical or dental education or research; or (iii) authorized institution; or

(iv) medical practitioner or dental practitioner; for scientific purposes or therapeutic purposes;

(b) in the case of a donation for therapeutic purposes, to any natural person for therapy of that person.

6 Provisions relating to donations in terms of section 3 or 4

(1) Where a person has made a donation in terms of section *three* or *four* without specifying any particular donee or, where there is a specific donee, the donee is not readily available at the time and place of death or is unable for any reason to accept the donation, the nearest authorized institution shall be deemed to be the donee.

(2) Where a person, in making a donation in terms of section *three* or *four*, gives conflicting directions, effect shall be given to the direction which is last made:

Provided that, where a gift of the entire body is made to one donee and a gift of specific tissue is made to another donee, the donation of the entire body shall be deemed to be a donation of the remainder of the body.

(3) The donee shall have a right to the body of a deceased person which has been donated or to such part of it as has been donated only for the purpose of carrying out the wish of the person who made the donation.

(4) The donee shall have twenty-four hours following the death of a person part of whose body has been donated in terms of section *three* or *four* within which he may, subject to sections *eight* and *nine*, remove or cause to be removed the tissue so donated and, after the expiry of the said period of twenty-four hours, whether or not the donee has removed such tissue or caused such tissue to be removed, the body may be claimed by the relatives of the deceased or by the person or persons otherwise entitled thereto for the purposes of the disposal thereof by way of interment or cremation of the remains or otherwise.

(5) It shall not be a requirement for the lawfulness of a donation in terms of section *three* or *four* that the person who makes the donation shall specify expressly the purposes of such donation.

7 Donation presumed if identity tag worn by deceased

Where a person is at the time of his death wearing an identity tag issued in terms of regulations, he shall be deemed to have made a donation in terms of section *three* on such terms as may be prescribed.

8 Authority for use of body or part thereof

(1) No tissue shall be removed from the body of a deceased person and no post-mortem examination shall be carried out on a deceased person in terms of a donation or consent to a post-mortem examination in terms of section *three* or *four* unless authority has been obtained in terms of subsection (2).

(2) Subject to subsection (3), upon the application of a medical practitioner or dental practitioner—

- (a) a magistrate of the province in which a person has died or in which the body of a deceased person is; or
- (b) the medical practitioner in charge of a hospital in which a person has died or in charge of a mortuary in which the body of a deceased person is; or
- (c) any medical practitioner, other than, in the case of a donation in terms of subparagraph (i) of paragraph (b) of section *four*, the Government medical officer referred to in that paragraph, employed at the hospital or mortuary referred to in paragraph (b) and empowered by the medical practitioner in charge thereof to give authority in terms of this subsection; may, notwithstanding any other enactment, authorize—
 - (i) the medical practitioner or dental practitioner to remove, in terms of section *nine*, any specified tissue from the body of the deceased person for specified purposes before its burial or cremation; or
 - (ii) the medical practitioner to perform, in terms of section *ten*, a post-mortem examination of the body of the deceased person for specified purposes before its burial or cremation; or
 - (iii) any person who attends an institution referred to in subparagraph (ii) of paragraph (a) of section *five* to use the body or part thereof for scientific purposes;

as the case may be.

(3) Authority shall not be given in terms of subsection (2) unless the person giving the authority is satisfied that—

- (a) a donation has been made or consent has been given to a post-mortem examination, as the case may be, in terms of section *three* or *four*:

Provided that the person giving the authority may act upon a will or a document referred to in paragraph (b) of subsection (1) of section *three* if it appears on the face of it to be legally valid and, in the case of a will, irrespective of whether the will has been lodged with or accepted by the Master of the High Court; and

- (b) the body is no longer required for post-mortem examination in terms of any enactment or, in the case of the removal of tissue, upon the certificate of a medical practitioner that the removal of tissue will not affect the outcome of the post-mortem examination; and
- (c) the removal of the specified tissue from or the post-mortem examination of the body of the deceased person is necessary for any of the purposes specified in section *five* or *ten*, as the case may be.

9 Removal of tissue from body of deceased person

(1) Subject to subsection (2) and to such conditions as may be prescribed, tissue which has been donated in terms of section *three* or *four* may be removed from the body of a deceased person in terms of an authority under section *eight* by or under the supervision of a medical practitioner or dental practitioner where such removal is necessary for any scientific purposes or therapeutic purposes.

(2) Before the removal of tissue in terms of subsection (1), the death of the person concerned shall be established by—

- (a) in the case of the removal of tissue for therapeutic purposes, not less than two medical practitioners, one of whom shall have been practising as a medical practitioner for at least five years after the date on which he was, whether in Zimbabwe or in any other country or territory, first registered as a medical practitioner and both of whom shall not be members of the team of medical practitioners who intend to use in the body of a living person the tissue so removed;
- (b) in the case of the removal of any tissue for scientific purposes, the issue of a death certificate in terms of any enactment.

10 Post-mortem examination of body

A medical practitioner may, in terms of an authority under section *eight*, carry out a post-mortem examination on the body of a deceased person before its burial or cremation—

- (a) where such examination is necessary for the purpose of determining more precisely the cause of death; or
- (b) for any scientific purposes.

11 Removal of tissue at post-mortem examination

Subject to such conditions as may be prescribed, a medical practitioner who conducts a post-mortem examination of the body of a deceased person in terms of this Act or any other enactment may, if—

(a) he is satisfied that the removal of the tissue will in no way affect the outcome of the examination; and

(b) at the time of the examination he has no reason to believe that the body or the tissue in question has been donated in terms of section *three* or *four* or that the removal of the tissue would be contrary to any direction given by the deceased person during his lifetime; remove such tissue from the body and donate it to such authorized institution for such scientific purposes or therapeutic purposes as may be prescribed.

12 Removal of replaceable tissue from bodies of living persons

Replaceable tissue may be removed from the body of a living person for scientific purposes or therapeutic purposes—

- (a) in the case of a person of or over the age of eighteen years who is capable of expressing his consent, with the consent of that person;
- (b) in the case of a person under the age of eighteen years, whether or not he is capable of expressing his consent, with the written consent of his parents or guardian:

Provided that the Secretary may, for the maintenance of public health, authorize the removal of a blood sample for scientific purposes from a person under the age of eighteen years without the written consent referred to in this paragraph.

13 Removal of tissue other than replaceable tissue, from bodies of living persons

(1) Subject to this section and to such conditions as may be prescribed, a medical practitioner or dental practitioner may, where the removal is necessary for any therapeutic purposes, remove from the body of a living person with that person's written consent tissue, other than replaceable tissue.

(2) No tissue shall be removed in terms of subsection (1) for use in the body of any other living person unless the removal is authorized in writing by the medical practitioner in charge of the hospital or authorized institution in which the removal takes place who shall not be a member of the team of medical practitioners who intend to use in the body of a living person the tissue so removed.

(3) No tissue shall be removed in terms of subsection (1) from the body of a minor or a person who is mentally disordered or defective.

(4) In subsection (3)—

“mentally disordered or defective” has the meaning given to it by the Mental Health Act [*Chapter 15:06*].

14 Acquisition, preservation, use and issue of tissue by authorized institutions

(1) An authorized institution may receive, acquire, preserve or use any tissue which has been lawfully removed from the body of a deceased person or a living person.

(2) An authorized institution may at any time issue any tissue in its possession to a medical practitioner or dental practitioner for any scientific purposes or therapeutic purposes.

15 Rights concerning tissue

Any person to whom any body or tissue is donated or who acquires any tissue in terms of this Act shall, upon delivery of the body or tissue to him by way of use or otherwise, be vested, subject to this Act, with the exclusive rights over the body or tissue, as the case may be.

16 Exclusion of civil and criminal liability in respect of *bona fide* act of medical practitioner, dental practitioner or magistrate

(1) No—

(a) medical practitioner or dental practitioner who has—

- (i) removed any tissue from the body of a deceased person for any scientific purposes or therapeutic purposes; or
- (ii) performed a post-mortem examination for the purposes specified in section *ten*; or
- (iii) removed any tissue from the body of a living person for any scientific purposes or therapeutic purposes;

(b) magistrate or medical practitioner who has given any authority in terms of section *eight*; shall incur any legal liability, whether civil or criminal, in respect of any such act in the event of any purported donation, consent or authority being subsequently proved to be legally invalid because of a will being declared null and void or for any other reason, unless it is proved that the medical practitioner, dental practitioner or magistrate at the time of performing the act referred to in this subsection was aware of the fact that any purported donation or consent was in fact legally void.

(2) Subsection (1) shall not be interpreted as extending in any way the existing principles of civil or criminal liability.

17 Sale of tissue for scientific purposes or therapeutic purposes prohibited

(1) Subject to subsection (3), no person, other than an authorized institution, may receive any fee, profit or remuneration for providing any other person for scientific purposes or therapeutic purposes with any tissue, other than blood or a blood product, removed from the body of any deceased or living person, and any payment which has been received for such provision of tissue shall be refundable to the person who made it.

(2) Subject to subsection (3), any person, other than an authorized institution, who in consideration for any fee, profit or remuneration procures for any other person for scientific purposes or therapeutic purposes any tissue, other than blood or a blood product, from the body of any deceased or living person shall be guilty of an offence and liable to a fine not exceeding level nine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

(3) Nothing in this section contained shall prevent any medical practitioner or dental practitioner from receiving remuneration for any professional services rendered by him to any person.

18 Publication of identity of donor or recipient of body or tissue prohibited

(1) Subject to subsection (3), no person shall publish to any other person any fact whereby the identity of the donor of the body of a deceased person or of any tissue thereof or the donor of tissue removed from the body of a living person may be established, unless the deceased person prior to his death, a donor referred to in section *four* or the living donor, as the case may be, has consented thereto in writing.

(2) Subject to subsection (3), no person shall publish to any other person any fact whereby the identity of the recipient of any tissue removed from the body of a deceased person or the body of a living person may be established, unless the recipient has consented thereto in writing:

Provided that, where the recipient has died without having given the consent referred to in this subsection and has not indicated that he would not be prepared to give that consent, consent may be given in writing by the nearest relative of the recipient.

(2a) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as inserted by section 4 of Act No. 22 of 2001]

(3) This section shall not apply in respect of any communication reasonably necessary in connection with the removal, storage or use of the tissue or body, as the case may be.

(4) In the proviso to subsection (2)—

“nearest relative” means the person first described in the definition of “relative”, relatives of the whole blood being preferred to relatives of the same description of the half blood and the elder or eldest of two or more relatives of the same description being preferred to the other or others of them, regardless of sex.

19 Offences and penalties

(1) Any person who—

- (a) removes any tissue from the body of a deceased person or the body of a living person otherwise than in accordance with this Act or any other law; or
- (b) performs a post-mortem examination of the body of a deceased person otherwise than in terms of this Act or any other enactment; or
- (c) purports to grant an authority in terms of section *eight* but does not comply with that section:

shall be guilty of an offence and liable to a fine not exceeding level nine or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

(2)

[Section repealed by Act No. 22 of 2001]

20 Regulations

(1) Subject to this section, the Minister may make regulations—

- (a) prescribing the form in which any application shall be made or authority shall be given in terms of section *eight*;
- (b) prescribing the conditions subject to which a post-mortem examination may be performed or tissue may be removed from the body of a deceased or living person in terms of this Act;
- (c) requiring any person who gives authority in terms of section *eight* to supply to the Secretary such information within such period of time and in such manner as may be prescribed;
- (d) requiring a medical practitioner who, in terms of this Act, has removed any tissue from the body of a living person or performed a post-mortem examination to supply to the Secretary such information within such period of time as may be prescribed;

- (e) relating to the preservation, use, possession, issue or disposal of any tissue or any thing produced from tissue removed from the body of a deceased or living person in terms of this Act; (f) prescribing—
 - (i) the tissue that a medical practitioner may remove from a body in terms of section *eleven*;
 - (ii) the authorized institution to which any tissue removed in terms of section *eleven* shall be donated by the medical practitioner and the scientific purposes or therapeutic purposes for which the tissue may be received and used or issued by the authorized institution to which it is donated;
 - (iii) the hospitals, medical practitioners, dental practitioners, medical or dental schools or universities to which or to whom tissue removed in terms of section *eleven* may be made available by any such authorized institution and the moneys that it may charge in respect of any such tissue or substance so made available by it;
 - (iv) the information to be supplied in respect of tissue removed in terms of section *eleven* and the persons who shall supply it and the persons to whom, the period of time within which and the manner in which it shall be supplied;
 - (g) relating to the receipt, preservation, use or disposal of the body of a deceased person for the purposes of this Act;
 - (h) prescribing the requirements with which an authorized institution shall comply;
 - (i) relating to the issue of identity tags referred to in section *seven*, including the persons who may issue them, the particulars contained upon them, the terms on which a donation is deemed to be made, whether by reference to the particulars contained upon the identity tag or otherwise, and the records which shall be kept in regard to them;
 - (j) generally, for all matters which by this Act are required or are permitted to be prescribed or which, in his opinion, are necessary or convenient to be provided for in order to carry out or give effect to this Act.
- (1a) Regulations made in terms of subsection (1) may prescribe penalties for contraventions thereof, but no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsection as inserted by section 4 of Act No. 22 of 2001]

(2) The Minister shall not prescribe any tissue in terms of subparagraph (i) of paragraph (f) of subsection (1) except upon the recommendation—

(a) in the case of tissue required for the preparation of any therapeutic substance, of the Drugs Control Council established by section 3 of the Drugs and Allied Substances Control Act [*Chapter 15:03*]; (b) in the case of tissue required for any other purpose, of the Medical Research Council.

(3) The Minister shall, not less than three months before any regulations referred to in paragraph (f) of subsection (1) are made, cause a draft of the regulations to be published in the *Gazette* together with a notice declaring his intention to make them and invite interested persons to furnish him with any comments thereon or any representations they may wish to make in regard thereto:

Provided that, if the Minister thereafter determines upon any alteration in the draft regulations as a result of any comments or representations submitted in terms of this subsection, it shall not be necessary to publish the alteration in terms of this subsection before the amended draft is published as regulations.

(4) Any regulations referred to in paragraph (f) of subsection (1) shall be laid before Parliament on one of the fourteen days on which Parliament next sits after the promulgation of the regulations and shall, if Parliament passes a resolution disapproving of the regulations or any provision thereof on one of the thirty days on which Parliament next sits after the regulations are so laid before it, cease to have effect to the extent to which the regulations are so disapproved of on the day on which the resolution is passed. (5)