



# Human Tissue Authority

## Guidance – Public Display

September 2006



# Introduction

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1. The Human Tissue Act 2004 (HT Act) sets out a new legal framework for the storage and use of tissue from the living and for the removal, storage and use of tissue and organs from the dead.
2. The HT Act repeals and replaces the Human Tissue Act 1961, the Anatomy Act 1984 and the Human Organ Transplants Act 1989 as they relate to England and Wales. It also repeals and replaces the Human Tissue Act (Northern Ireland) 1962, the Human Organ Transplants (Northern Ireland) Order 1989 and the Anatomy (Northern Ireland) Order 1992. The provisions of the HT Act covering consent for and licensing of public display will be commenced in September 2006.
3. The HT Act also establishes the Human Tissue Authority (HTA) as the regulatory body for all matters concerning the removal, storage, use and disposal of human tissue (excluding gametes and embryos) for scheduled purposes under the HT Act. The use of human tissue for public display is one of these Scheduled Purposes.
4. The HTA is also responsible for giving advice and guidance on the HT Act.
5. One of the HTA's statutory functions is to issue Codes of Practice. The HTA's Codes give practical guidance to those carrying out activities which lie within the HTA's remit and lay down the standards expected. The Codes of Practice are:
  1. Consent
  2. Donation of organs, tissue and cells for transplantation
  3. Post mortem examination
  4. Anatomical examination
  5. Removal, storage and disposal of human organs and tissue
  6. Donation of allogeneic bone marrow and peripheral blood stem cells for transplantation.
6. The guidance set out in this document applies to all those undertaking relevant activities. Failure to follow this guidance is not in itself a criminal offence under the HT Act, but the HTA may take any such breach into account when taking licensing decisions.

# Underlying principles

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7. At the heart of the HT Act is the requirement that consent be obtained for the removal, storage and use of any relevant material which has come from a human body for certain Scheduled Purposes. These purposes include public display. The HT Act provides exemptions in certain circumstances, described later.
8. A key principle on which the HT Act is based is that all human bodies, body parts and tissue within the HT Act's scope should be treated with appropriate respect and dignity. This principle applies to the public display of a body or tissue from a deceased person, and the guidance's proposals complement those within the European Union Tissues and Cells Directive (EUTCD) and the Department of Culture Media and Sport's document Guidance for the care of Human Remains in Museums.

## Scope and definition

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9. Public display is one of the Scheduled Purposes under the HT Act to which the consent provisions may apply and which constitutes in certain circumstances a licensable activity.
10. This guidance provides advice on the public display of human bodies, body parts and human tissue and the implementation of the HT Act. The HT Act does not contain a definition of public display, but the HTA will regard a public display as:

*An exhibition, show or display in which a body of a deceased person or relevant material which has come from the body of a deceased person is used for the purpose of being exposed to view by the public.*

11. Display for the purposes of enabling people to pay their final respects to the deceased or a display which is incidental to the deceased's funeral or part of the rite are not regarded by the HT Act as public display.
12. The HT Act does not provide for the licensing of the display of photographic or electronic images whether moving (e.g. in a broadcast or transmission) or static (e.g. in a text book).

# Licensing of a public display

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13. Licensing is one of the regulatory functions of the HTA; a licence may be required from the HTA for the use for public display of human bodies and human tissue because the HT Act lists among the licensable activities:

*“ the use, for the purpose of public display, of –*

- *the body of a deceased person, or*
- *relevant material which has come from the body of a deceased person.”*

The HT Act however exempts from licensing such public displays when the person died before 1 September 1906.

14. The HT Act contains provisions for licensing in certain circumstances those establishments which carry out the public display of a deceased person’s body or material from such a body. A licence for public display will be required once Section 16 of the HT Act is brought into force on 1 September 2006. The duration of the public display does not affect the requirement for licensing.

15. The HTA has published a Guide to Licensing for Designated Individuals and Licence Holders which sets out in detail the licensing arrangements under the HT Act; these include a description of the role of the Designated Individual (DI). The DI is of fundamental importance to the HT Act’s scheme of regulatory control and the role is central to the HTA’s framework for licensing public display and other activities.

## Licensing standards – public display

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16. The licensing standards for public display are published on the HTA's website at:  
[www.hta.gov.uk/licensing.cfm](http://www.hta.gov.uk/licensing.cfm)

# Consent

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17. Central to the HT Act is the need to obtain consent for the removal, storage and use of bodies or human tissue for Scheduled Purposes. The HT Act specifies the basic requirements for consent for the removal, storage and use of human tissue
18. Consent is not however required for public display of material coming from the body of a person who died before 1 September 1906. Furthermore, the HT Act does not require consent for the public display of existing holdings of human tissue, whatever their age.
19. The giving of consent is a positive act. The absence of refusal is not evidence of consent.
20. The HT Act and the HTA's Code of Practice on Consent encompass consent provisions on:
  - the storage and use of relevant material from the living;
  - the storage and use of bodies of the deceased; and
  - the removal, storage and use of 'relevant material' from a body of the deceased.
21. All those involved in the removal, storage and use of human tissue including its use for public display should be aware of the statutory requirements for consent.



# Obtaining consent

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22. The HT Act specifies that, in the case of donation of the deceased person's body or body parts for public display, consent needs to be attested i.e. written down (the person's signature or oral consent recorded) and witnessed; or, for adults, contained in a will. Neither the next of kin nor any other person can agree to the use of an individual's body after their death for public display.
  
23. Anyone removing, storing or using material in circumstances for which the HT Act requires consent must be satisfied that the consent is in place. Public display is one such use. The person making the public display must ensure that they obtain the necessary assurance that consent has been given although they do not need to have taken or recorded the consent personally.

# Who can give consent?

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24. The general principle applying to consent for the storage and use of tissue for Scheduled Purposes is that, for consent to be valid, it must be given voluntarily by an appropriately informed person who has the capacity to agree to the activity in question. Adults are deemed competent to consent if they can:

- understand the nature and purpose of the proposed procedure;
- understand and retain information relevant to the decision;
- weigh the necessary information to arrive at a choice.

25. More detailed guidance on who can give consent and questions of capacity are explored in the HTA's Code of Practice on Consent.

# Human Remains – Department of Culture, Media and Sport guidance

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26. In 2004 the Department of Culture, Media and Sport (DCMS) published Guidance for the care of Human Remains in Museums (available at [www.culture.gov.uk](http://www.culture.gov.uk)). Their document covers areas of museum activity which may also be affected by the HT Act 2004 although the DCMS guidance has a longer historical reach, dealing with material collected before the period covered by the HT Act: this HTA guidance does not cover a public display a body or material from a body if that body or material has come from a person who died before 1 September 1906.
27. The DCMS guidance, while dealing with the curating, care and use of human remains largely outside the scope of the HT Act, rests on the principle that 'human remains . . . should be treated with dignity and respect'. The DCMS guidance and this guidance are therefore complementary and, in issuing licences, the HTA will look for compliance with this underlying principle in the handling of all human material.

# Glossary

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These terms have been defined with reference to the HT Act and the HTA's Codes of Practice and should be read in that context.

**Designated Individual:** Means the individual designated in the licence as the person under whose supervision the licensed activity is authorised to be carried on. This person is responsible for securing that other persons to whom the licence applies are suitable persons, that suitable practices are carried out in the course of carrying-on the licensed activity and for compliance with the conditions of the licence. The HTA must be satisfied as to the suitability of this person.

**Existing holdings:** Body of a deceased person or relevant material which has come from a human body held immediately prior to the commencement of section 1 of the HT Act 2004 for use for a Scheduled Purpose.

**Licensing:** A number of activities can only be carried out where the establishment is licensed under the HT Act by the HTA for that purpose. The activities are:

- the carrying out of an anatomical examination;
- the making of a post mortem examination;
- the removal from the body of a deceased person (otherwise than in the course of the activities mentioned above) of relevant material of which the body consists or which it contains, for use for a Scheduled Purpose other than transplant;
- the storage of an anatomical specimen;
- the storage (other than of an anatomical specimen) of the body of a deceased person or relevant material which has come from a human body for use for a Scheduled Purpose;
- the use, for the purpose of public display, of the body of a deceased person, or relevant material which has come from the body of a deceased person.

**Public display:** Public display is one of the Scheduled Purposes under the HT Act to which the consent provisions may apply and which constitutes in certain circumstances a licensable activity. The HT Act does not contain a definition of public display. The HTA will regard a public display as an exhibition, show or display in which a body of a deceased person or relevant material which has come from the body of a deceased person is used for the purpose of being exposed to view by the public.

**Relevant material:** Is defined by the HT Act as material other than gametes, which consists of or includes human cells. In the HT Act, references to relevant material from a human body do not include:

- (a) embryos outside the human body; or
- (b) hair and nail from the body of a living person.

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**Scheduled Purposes:** Scheduled Purposes are the activities relating to the removal, storage and use of human organs and other tissue, listed in Schedule 1 of the HT Act that require consent. The Purposes are divided into 2 parts:

Part 1: Purposes requiring consent: general

- Anatomical examination
- Determining the cause of death
- Establishing after a person's death the efficacy of any drug or other treatment administered to him
- Obtaining scientific or medical information about a living or deceased person which may be relevant to any other person (including a future person)
- Public display
- Research in connection with disorders, or the functioning, of the human body
- Transplantation.

Part 2: Purposes requiring consent:  
deceased persons

- Clinical audit
- Education or training relating to human health
- Performance assessment
- Public health monitoring
- Quality assurance.

**Storage:** Maintaining the tissue under appropriate controlled conditions.

**Tissue:** Any and all constituent part(s) of the human body formed by cells.

# Background reading

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*Learning from Bristol: the report of the public inquiry into children's heart surgery at Bristol Royal Infirmary 1984–1995*, Bristol Royal Infirmary, July 2001.

*Report of the Royal Liverpool Children's Inquiry*, January 2001.

*Department of Health (May 2003)  
The investigation of events that followed the death of Cyril Mark Isaacs*; Department of Health Isaacs Report Response, July 2003.