



**PE1911: Review of Human Tissue (Scotland) Act 2006 as it relates to post-mortems**  
**Evidence from the Scottish Council of Jewish Communities**

The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland. SCoJeC advances public understanding about the Jewish religion, culture and community, by providing information and assistance to educational, health, and welfare organisations, representing the Jewish community in Scotland to Government and other statutory and official bodies, and liaising with Ministers, MSPs, Churches, Trades Unions, and others on matters affecting the Jewish community. SCoJeC also provides a support network for the smaller communities and for individuals and families who live outwith any Jewish community or are not connected with any Jewish communities, and assists organisations within the Scottish Jewish community to comply with various regulatory requirements. SCoJeC also promotes dialogue and understanding between the Jewish community and other communities in Scotland, and works in partnership with other organisations and stakeholders to promote equality, good relations, and understanding among community groups.

In preparing this evidence we have consulted as widely as possible given the short timescale among members of the Scottish Jewish community.

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Jewish Law regards the human body as sacrosanct, and requires that it should always be treated with dignity. This respect extends not only to the body itself, but to all body parts, organs, and tissue. Once death has occurred, tradition requires there should be as little interference with the body as possible. Ideally, it should not be left unattended, and burial should take place as early as possible, preferably before sunset on the day death occurred. Although funerals may sometimes be delayed to enable distant family to attend or because immediate access to the cemetery is not possible, in most cases, delay or procedures such as a post-mortem examination are likely to be particularly distressing to the family of the deceased. In addition, the *shiva* (initial period of mourning) cannot begin until after the burial has taken place, and consequently any postponement delays the grieving process which inevitably causes great psychological distress to the bereaved.

For these reasons, it is very uncommon for families to authorise the hospital post-mortem examinations that are sometimes requested by medical staff. We recognise, however, that there may be occasions when it may be necessary for a post-mortem examination to take place, for example if the death is unexpected and the cause unclear, in order to ascertain whether there is any risk to public health, or to determine whether the death may have resulted from a criminal act. We are grateful to the Crown Office and Procurator Fiscal Service for their frequent assistance in expediting such examinations, and for their willingness to accept the findings of non-invasive “view and grant” examinations whenever possible. We are also grateful to the various mortuary

services for their assistance in minimising delays so that burial can take place as soon as possible after a death. We are, however, concerned at the reluctance of some pathologists even to consider undertaking a view and grant examination, so that an invasive surgical procedure may be carried out as a first line of investigation even when the non-invasive procedure might have afforded sufficient information to determine the cause of death.

Under Section 40 of the Human Tissue (Scotland) Act 2006<sup>1</sup> organs removed during the course of a procurator fiscal post-mortem examination that are no longer required for the purposes of that examination may only be retained if retention is properly authorised under sections 42 to 46 of the Act<sup>2</sup>.

However, under Section 38 of the Act<sup>3</sup>, a tissue sample taken during the course of a procurator fiscal post-mortem examination that is no longer required for the purposes of that examination “falls to be retained as part of the medical records of the deceased person”. Unless properly authorised under sections 42 to 46 of the Act, no tissue should be used for any other purpose than that for which it was removed, but no authorisation is required for its retention.

Although no authorisation for retention of tissue is required by the Act, it is clearly good practice to obtain authorisation – or alternatively, to return the tissue to the family or else destroy it according to their wish – and guidance<sup>4</sup> from NHS Greater Glasgow and Clyde states that “Small samples of tissue, for histological purposes only, will be retained in every post mortem to confirm macroscopic findings **unless consent for this is withheld.**” (our emphasis). Although not explicitly stated, this, of course, implies that consent for the retention of tissue samples may be either given or withheld, and so must actively be sought – as indeed ought to be the case.

This guidance should be replicated throughout NHS Scotland, as the wishes of the deceased and his or her family should be paramount, and should be respected in relation to all aspects of a post-mortem examination, including the disposal of any organs and tissue that may have been removed from the body during that examination.

We would therefore support a review of the Human Tissue (Scotland) Act 2006, and in particular, an amendment to bring disposal of tissue samples taken in the course of a procurator fiscal post-mortem in line with the disposal of organs similarly removed, i.e. to require authorisation for the retention of all body parts, organs and tissue. Furthermore, in order to evidence compliance, there should be a requirement to document disposal in the medical record, including, if any organs or tissue are retained, a copy of the written authorisation.

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<sup>1</sup> <https://www.legislation.gov.uk/asp/2006/4/section/40>

<sup>2</sup> <https://www.legislation.gov.uk/asp/2006/4/section/42>

<sup>3</sup> <https://www.legislation.gov.uk/asp/2006/4/section/38>

<sup>4</sup> Autopsy/Post-Mortem Service (NHS Greater Glasgow and Clyde, March 2021)  
<https://www.nhsggc.org.uk/about-us/professional-support-sites/laboratory-medicine/laboratory-disciplines/pathology-and-mortuary-services/autopsypost-mortem-service/#>