

**PUBLIC HEALTH (HUMAN TISSUES, CELLS AND  
ORGANS) ACT 2009****Principal Act**

<b>Act. No. 2009-53</b>	<i>Commencement</i>	1.12.2009
	<i>Assent</i>	21.12.2009

Amending enactments	Relevant current provisions	Commencement date
LN. 2012/151	Long title, ss. 1A, 1B, 2-27, 28A-28W, 29, Schs. 5, 6 & 12	1.11.2012
2014/157	Schs. 2 & 3	17.6.2014
2017/081	ss. 2, 16(1), (3), (4), (9), (10), (11), 16A, 26(1), (3), Schs. 6-8, 10-11A	29.4.2017
2017/093	<i>Notice of Corrigendum</i>	
2018/035	ss. 28X-28Z	8.2.2018
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**English sources:**

None cited

**Transposing:**

Directive 2004/23/EC	Directive 2010/53/EU
Directive 2006/17/EC	Directive 2012/39/EU
Directive 2006/86/EC	Directive 2015/565/EU

**EU Legislation/International Agreements involved:**

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## PRELIMINARY

### **Title and commencement.**

1. This Act may be cited as the Public Health (Human Tissues, Cells and Organs) Act 2009 and shall be deemed to have come into operation on 1 December 2009.

### **Interpretation: general.**

1A. In this Act—

“Commission” means the European Commission;

“functions” includes powers and duties, and references to the performance of functions include, with respect to powers and duties, references to the exercise of powers and the carrying out of the duties;

“Gibraltar Health Authority” means the Gibraltar Health Authority established by section 3 of the Medical (Gibraltar Health Authority) Act 1987;

“inspect” includes search;

“inspection” means formal and objective control to identify problems in accordance with standards adopted to assess compliance with this Act;

“Minister” means the Minister with responsibility for Health;

“premises” means any place, ship or other vessel, aircraft, railway wagon or other vehicle, and includes a container used to transport relevant things;

“quality management” means the coordinated activities to direct and control an organisation with regard to quality;

“quality system” means the organisational structure, defined responsibilities, procedures, processes, and resources for implementing quality management and includes all activities which contribute to quality, directly or indirectly;

“record” includes, in addition to a record in writing–

- (a) a disc, tape, sound-track or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form;
- (b) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form; and
- (c) a photograph;

and any reference to a copy of a record includes–

- (i) in the case of a record to which paragraph (a) of this definition applies, a transcript of the sounds or signals embodied therein;
- (ii) in the case of a record to which paragraph (b) of this definition applies, a still reproduction of the images embodied therein; and
- (iii) in the case of a record to which paragraphs (a) and (b) of this definition apply, such a transcript together with such a still reproduction.

**PART 1  
HUMAN TISSUES AND CELLS**

**Designation of the competent authority.**

1B.(1) The Minister is designated as the competent authority for the purpose of this Act.

(2) The Minister may enter into a contractual arrangement with a person for the purpose of that person assisting the Minister to perform any of his functions as competent authority under this Act.

**Interpretation of Part 1.**

2.(1) In this Part, unless the context otherwise requires–

“allogeneic use” means cells or tissues removed from one person and applied to another;

“authorised person” means a person appointed under section 22(1);

“autologous use” means cells or tissues removed from and applied in the same person;

“cells” means individual human cells or a collection of human cells when not bound by any form of connective tissue;

“Commission” means the European Commission;

“critical” means potentially having an effect on the quality or safety or both of or having contact with the cells and tissues;

“direct use” means any procedure where cells are donated and used without any banking;

“distribution” means transportation and delivery of tissues or cells intended for human applications;

“donation” means donating human tissues or cells intended for human applications;

“donation identification sequence” means the first part of the Single European Code consisting of the EU tissue establishment code and the unique donation number;

“donor” means every human source, whether living or deceased, of human cells or tissues;

“EU Coding Platform” means the IT platform hosted by the European Commission which contains the EU Tissue Establishment Compendium and the EU Tissue and Cell Product Compendium;

“EU Tissue and Cell Product Compendium” means the register of all types of tissues and cells circulating in the European Union and the respective product codes under the three permitted coding systems (EUTC, ISBT128 and Eurocode);

“EU tissue establishment code” means the unique identifier for accredited, designated, authorised, or licensed tissue establishments in the European Union. The tissue establishment code consists of an ISO country code and the tissue establishment number set out in the EU Tissue Establishment Compendium, as further specified in Schedule 11;

“EU Tissue Establishment Compendium” means the register of all tissue establishments which are authorised, licensed, designated or accredited by the competent authority and which contains the information about these tissue establishments as set out in Schedule 11A;

“EUTC” means the product coding system for tissues and cells developed by the European Union consisting of a register of all types of tissues and cells circulating in the European Union and their corresponding product codes;

“expiry date” means the date by which the tissues and cells can be applied, as further defined in Schedule 11;

“functions” includes powers and duties, and references to the performance of functions include, with respect to powers and duties, references to the exercise of powers and the carrying out of the duties;

“Gibraltar Health Authority” means the Gibraltar Health Authority established by section 3 of the Medical (Gibraltar Health Authority) Act, 1987;

“human application” means the use of tissues or cells on or in a human recipient and extra-corporal applications;

“implementing Directives” means Commission Directive 2006/17/EC of 8 February, 2006, implementing Directive 2004/23/EC of the European Parliament and of the Council as regards certain technical requirements for the donation, procurement and testing of human tissues and cells and Commission Directive 2006/86/EC of 24 October 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability



requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells;

“inspect” includes search;

“inspection” means formal and objective control to identify problems in accordance with standards adopted to assess compliance with this Part;

“Minister” means the Minister with responsibility for Health;

“organ” means a differentiated and vital part of the human body, formed by different tissues, that maintains its structure, vascularisation and capacity to develop physiological functions with an important level of autonomy;

“organisation responsible for human application” means a health care establishment or a unit of a hospital or another body which carries out human application of human tissues and cells;

“partner donation” means the donation of reproductive cells between a man and a woman who declare that they have an intimate physical relationship;

“pooling” means the physical contact or mixing in a single container, of tissues or cells from more than one procurement from the same donor, or from two or more donors;

“premises” means any place, ship or other vessel, aircraft, railway wagon or other vehicle, and includes a container used to transport relevant things;

“prescribed activity” means an activity to which this Part applies, and that is specified in section 4(1);

“preservation” means the use of chemical agents, alterations in environmental conditions or other means during processing to prevent or retard biological or physical deterioration of cells or tissues;

“principal Directive” means Directive 2004/23/EC of the European Parliament and of the Council of 31 March, 2004 setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells;

“processing” means all operations involved in the preparation, manipulation, preservation and packaging of tissues or cells intended for human applications;

“procurement” means a process by which tissue or cells are made available;

“procurement organisation” means a health care establishment or a unit of a hospital or another body that undertakes the procurement of human tissues and cells and that may not be accredited, designated, authorised or licensed as a tissue establishment;

“product code” means the identifier for the specific type of tissue and cell in question. The product code consists of the product coding system identifier indicating the coding system used by the tissue establishment (“E” for the EUTC, “A” for ISBT128, “B” for Eurocode) and the tissues and cells product number foreseen in the respective coding system for the product type, as further defined in Schedule 11;

“product identification sequence” means the second part of the Single European Code consisting of the product code, the split number and the expiry date;

“quality management” means the coordinated activities to direct and control an organisation with regard to quality;

“quality system” means the organisational structure, defined responsibilities, procedures, processes, and resources for implementing quality management and includes all activities which contribute to quality, directly or indirectly;

“quarantine” means the status of retrieved tissue or cells, or tissue isolated physically or by other effective means, whilst awaiting a decision on their acceptance or rejection;

“record” includes, in addition to a record in writing—

- (a) a disc, tape, sound-track or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form;
- (b) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form; and
- (c) a photograph;

and any reference to a copy of a record includes—

- (i) in the case of a record to which paragraph (a) of this definition applies, a transcript of the sounds or signals embodied therein;
- (ii) in the case of a record to which paragraph (b) of this definition applies, a still reproduction of the images embodied therein; and
- (iii) in the case of a record to which paragraphs (a) and (b) of this definition apply, such a transcript together with such a still reproduction;

“released for circulation” means distribution for human application or transfer to another operator, e.g. for further processing with or without return;

“relevant thing” means—

- (a) any tissue or cells; or
- (b) any article or substance used in the donation, procurement, processing preservation or storage of any tissue or cells or products manufactured from tissues and cells;

“reporting year” means the period of 12 months ending on 31 December;

“reproductive cells” means all tissues and cells intended to be used for the purpose of assisted reproduction;

“responsible person”, in relation to a tissue establishment, means the person who has been designated under section 8 as the responsible person for that tissue establishment;

“serious adverse event” means any untoward occurrence associated with the procurement, testing, processing, storage or distribution of tissues and cells—

- (a) that might lead to the transmission of a communicable disease, to death or life-threatening, disabling or incapacitating conditions for patients; or
- (b) which might result in, or prolong, hospitalisation or morbidity;

“serious adverse reaction” means an unintended response, including a communicable disease, in the donor or in the recipient associated with procurement or human application of tissues and cells–

- (a) that is fatal, life-threatening, disabling or incapacitating; or
- (b) which results in, or prolongs, hospitalisation or morbidity;

“Single European Code” or “SEC” means the unique identifier applied to tissues and cells distributed in the European Union. The Single European Code consists of a donation identification sequence and a product identification sequence, as further specified in Schedule 11;

“site” means any premises at which any prescribed activity or activities are carried out;

“split number” means the number which distinguishes and uniquely identifies tissues and cells having the same unique donation number and the same product code and originating from the same tissue establishment, as further defined in Schedule 11;

“Standard Operating Procedures” (SOPs) means written instructions describing the steps in a specific process, including the materials and methods to be used and the expected end product;

“storage” means maintaining the tissues and cells under appropriate controlled conditions until distribution;

“tissue” means all constituent parts of the human body formed by cells;

“tissue establishment” means a tissue bank or a unit of a hospital or another body where activities of processing, preservation, storage or distribution of human tissues and cells are undertaken which may also be responsible for procurement or testing of tissues and cells;

“traceability” means the ability to locate and identify the tissue or cell or both during any step from procurement, through processing, testing and storage, to distribution to the recipient or disposal, which also implies the ability to identify the donor and the tissue establishment or the manufacturing facility receiving, processing or storing the tissue or cells or both and the ability to identify the recipients at the medical facility or facilities applying the tissue or cells or both to the recipients; traceability also covers the ability to locate and identify all relevant data relating to products and materials coming into contact with those tissues or cells or both;

“unique donation number” means the unique number attributed to a specific donation of tissues and cells in line with the system in place in each Member State for allocating such numbers, as further specified in Schedule 11;

“validation” (or ‘qualification’ in the case of equipment or environments) means establishing documented evidence that provides a high degree of assurance that a specific process, SOP, piece of equipment or environment will consistently produce a product meeting its predetermined specifications and quality attributes; a process is validated to evaluate the performance of a system with regard to its effectiveness based on intended use;

“within the same centre” means that all steps from procurement to human application are carried out under the same responsible person, quality management system and traceability system, within a healthcare centre comprising at least an accredited, designated, authorised, or licensed tissue establishment and an organisation responsible for human application at the same location.

(2) Any term used but not defined in this Part shall be construed in accordance with the provisions of the principal Directive and the implementing Directives.

3. *Renumbered as 1B.*

### **Application of Part 1.**

4.(1) This Act shall, subject to subsection (2), apply to any activity as prescribed in this subsection that consists of any aspect of—

- (a) the donation, procurement, testing, processing, preservation, storage or distribution of tissues or cells intended for human applications;
- (b) the donation, procurement, testing, processing, preservation, storage or distribution of manufactured products derived from tissues and cells intended for human consumption,

save that, where manufactured products referred to in paragraph (b) are covered by other laws of Gibraltar implementing Community obligations, this Part shall only apply to the donation, procurement and testing of such manufactured products.

(2) This Act shall not apply to—

- (a) tissues and cells used as an autologous graft within the same surgical procedure;

- (b) blood and blood components as defined by the Public Health (Blood Safety and Quality) Act 2007;
- (c) organs or parts of organs if it is their function to be used for the same purpose as the entire organ in the human body.

(3) This Act shall apply to tissues and cells that are applied to the human body in clinical trials.

(4) This Act shall apply to the coding, processing, preservation, storage and distribution of—

- (a) human tissues and cells intended for human applications; and
- (b) manufactured products derived from human tissues and cells intended for human applications, where those products are not covered by other EC Directives.

(5) The provisions of sections 5(2)(b), 9(1)(c) and 10(6) to (8) of this Part concerning traceability and the reporting of serious adverse reactions and events, shall also apply to the donation, procurement and testing of human tissues and cells.

(6) This Act shall apply without prejudice to the Data Protection Act 2004 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

#### **Requirements for authorisation.**

5.(1) No person shall carry out any prescribed activity—

- (a) unless that person has been granted an authorisation under section 6; and
- (b) otherwise than in accordance with any conditions to which the authorisation is subject.

(2) Tissue establishments shall comply with—

- (a) the requirements for the accreditation, designation, authorisation or licensing of tissue establishments as required by Article 28(a) of the principal Directive; and
- (b) the requirements set out in Schedule 5.

(3) Pending a decision on the requirements of Article 28(a) of the principal Directive, tissue establishments shall comply with the standards set by the competent authority under section 6(2).

**Authorisation of tissue establishment or procurement, organisations.**

6.(1) Subject to subsection (2), the competent authority may grant an authorisation to a tissue establishment to carry out any prescribed activity at a specified site or sites, having satisfied itself that the tissue establishment—

- (a) complies with the requirements referred to in Article 28(a) of the principal Directive; and
- (b) complies with other relevant requirements of the implementing Directives and this Part.

(2) Pending decisions on the requirements pursuant to paragraphs (a), (c), (g) and (h) of Article 28 of the principal Directive, the competent authority shall set appropriate standards of quality and safety in respect of the matters referred to in paragraphs (a), (c), (g) and (h) of Article 28 of the principal Directive and the competent authority will have regard to these standards in respect of the matters referred to in those paragraphs when granting authorisations until such decisions have been made.

(3) An application for authorisation under subsection (1) shall be made to the competent authority.

(4) All applications for authorisation shall—

- (a) include all relevant information as determined by the competent authority; and
- (b) be accompanied by the prescribed fee.

(5) The competent authority may—

- (a) grant or refuse any authorisation applied for under subsection (3); and
- (b) grant such authorisation—
  - (i) in respect of particular sites or prescribed activities only; and
  - (ii) subject to conditions.

(6) Where the competent authority grants an authorisation, in the case of prescribed activities the competent authority shall give notice in writing to the tissue establishment specifying the prescribed activities which the tissue establishment may undertake under this Part at each site in respect of which

authorisation is granted, and if the grant is subject to conditions, the conditions which apply to the undertaking of those activities.

(7) Subject to the requirements of subsection (8), the competent authority may at any time remove or vary any of the conditions referred to in subsection 5(b)(ii), or may impose additional conditions.

(8) Where the competent authority removes or varies any condition or imposes any additional condition under subsection (7), the competent authority shall serve a notice on the tissue establishment concerned which shall—

- (a) give details of the conditions which the competent authority proposes to remove, or of the variation which he proposes to make to any existing conditions, or of any additional condition which he proposes to impose;
- (b) give the reasons for his decision; and
- (c) specify the date, which shall be not less than 14 days from the date on which the notice is served, from which the removal or variation of any condition, or the imposition of any additional condition shall apply.

(9) A tissue establishment shall not make any substantial change in the prescribed activities which it undertakes without the prior written approval of the competent authority.

(10) Any application by a tissue establishment for approval to make a substantial change in its activities shall be—

- (a) made in writing to the competent authority; and
- (b) accompanied by the prescribed fee.

(11) For the purpose of this section, a substantial change in a tissue establishment's activities is any change—

- (a) to the site or sites from which the tissue establishment operates or to the prescribed activities to be carried out at each site, and which would result in a failure to comply with the requirements of this Part; or
- (b) to the quality system, as set out in accordance with Article 28(c) of the principal Directive, which is likely to have a substantial impact on the conduct of, or might compromise the safety of, any of the prescribed activities which the tissue



establishment has been authorised to undertake under this section.

(12) The competent authority may authorise—

- (a) the tissue and cell preparation processes, which the tissue establishment may carry out in accordance with the requirements set out in Article 28(g) of the principal Directive;
- (b) the direct distribution of specific tissues and cells from where the procurement is carried out to a health care establishment for immediate transplantation in accordance with the requirements set out in Article 28(i) of the principal Directive;
- (c) the procurement of tissues and cells in accordance with the requirements of this Part in respect of procurement organisations; and
- (d) the laboratories that carry out the tests required for donors in accordance with this Part.

**Suspension or revocation of authorisation.**

7.(1) Subject to subsection (2), the competent authority may suspend or revoke the authorisation of a tissue establishment in respect of a site or sites or prescribed activity or both, on one or more of the following grounds—

- (a) that the tissue establishment or process has not complied with the requirements of this Part;
- (b) that a prescribed activity has not been or cannot be carried out pursuant to the requirements of this Part;
- (c) that any tissues or cells cannot be supplied to hospitals for human application in such a state that they could be safely used; or
- (d) that the information given by the tissue establishment under sections 6(4) and 19(3) was false or incomplete in any material respect.

(2) Subject to subsection (3), before suspending or revoking the authorisation of a tissue establishment, the competent authority shall serve notice on the tissue establishment stating that it intends to suspend or revoke the authorisation with effect from the date specified in the notice which shall be not less than 7 days from the date on which the notice is served.

(3) Where the competent authority considers that it is necessary in the interests of safety, it may, by a notice served on a tissue establishment, suspend or revoke its authorisation with immediate effect.

(4) Where—

- (a) the tissue establishment has failed, in any material respect, to comply with the requirements of this Part; or
- (b) the information given by the tissue establishment under sections 6(4) and 19(3) was false or incomplete in any material respect,

and the competent authority considers that the failure in question is not sufficiently serious to warrant suspension or revocation of the authorisation of the tissue establishment in the first instance, the competent authority may serve a notice on the responsible person of the tissue establishment in accordance with subsection (5).

(5) A notice served under this subsection shall—

- (a) identify the requirements of this Part in respect of which the tissue establishment has failed to comply with or, in the case of false or incomplete information, the further information which is required;
- (b) identify the action which the tissue establishment is required to take; and
- (c) give the timescale within which the tissue establishment shall take the action identified in paragraph (b).

(6) If the tissue establishment fails to comply with the requirements set out in the notice within the specified timescale, the competent authority may, by a notice served on the tissue establishment, suspend or revoke the authorisation of the tissue establishment.

(7) A suspension or revocation under subsection (6) shall take effect—

- (a) in a case where the competent authority considers that it is necessary in the interests of safety, immediately; or
- (b) in all other cases, from a date specified in the notice.

(8) Any suspension under subsection (1) or (6) shall be for such period as the competent authority shall consider necessary having regard to the reasons for the suspension.

(9) The suspension or revocation of an authorisation under subsection (1) or (6) may be total, or may be limited to a particular prescribed activity or to one or more prescribed activities carried out at a particular site or sites, or to a particular tissue or cell.

**Responsible person for tissue establishment.**

8.(1) Subject to subsection (2), a tissue establishment shall designate a person who is responsible for the following functions—

- (a) ensuring that all prescribed activities are carried out in accordance with the requirements of this Part;
- (b) providing information to the competent authority as required under section 6; and
- (c) the implementation in the tissue establishment of the requirements under sections 9, 10, 11, 12, 14, 15, 16, 18, 19 and 20.

(2) A tissue establishment shall not designate a person under subsection (1) unless that person has—

- (a) a diploma, certificate or other evidence of formal qualification in the field of medical or biological sciences awarded on completion of—
  - (i) a university course of study; or
  - (ii) a course recognised as an equivalent course by the competent authority; and
- (b) practical post-graduate experience in areas of work relevant to the responsibilities of the responsible person under this Part for at least 2 years, in an establishment (or more than one establishment) in any Member State lawfully undertaking activities related to the collection or testing (or both) of tissues and cells, or to their procurement, storage and distribution.

(3) The competent authority shall, from time to time, publish in the Gazette details of courses recognised by it for the purpose of subsection (2)(a)(ii).

(4) Tissue establishments shall inform the competent authority of the name of the responsible person referred to in subsection (1).

(5) The responsible person may delegate any of the functions specified in subsection (1) to other persons who shall be qualified by training and experience to perform them.

(6) Tissue establishments shall notify the competent authority of the name of any persons to whom functions have been delegated by the responsible person under subsection (5), and the specific functions which have been delegated to such persons.

(7) Where the responsible person or a person to whom functions have been delegated under subsection (5) is permanently or temporarily replaced, the tissue establishment shall, without delay, provide the competent authority with the name of the replacement, details of his qualifications and the date on which the replacement began his duties.

(8) If the competent authority considers that the responsible person does not meet the requirements of subsection (2), it shall serve a notice to that effect on the tissue establishment.

(9) If, within 14 days of receiving a notice in accordance with subsection (8), a tissue establishment is not able to demonstrate to the reasonable satisfaction of the competent authority that the responsible person meets the requirements of subsection (2), it shall, without delay—

- (a) relieve him of the duties of responsible person in respect of the tissue establishment;
- (b) appoint a new responsible person in his place; and
- (c) notify the competent authority that it has appointed a new responsible person and provide details of the name and qualifications of the person appointed.

**Requirements for the procurement and supervision of procurement of human tissues and cells.**

9.(1) Tissue establishments shall ensure that—

- (a) tissue and cell procurement and testing—
  - (i) take place in conditions authorised for that purpose;
  - (ii) are carried out by persons with appropriate training and expertise;
- (b) the tests required for donors are carried out by a qualified laboratory authorised by the competent authority; and

- (c) the preparation process at the tissue establishment complies with the requirements set out in Schedule 6.

(2) The competent authority shall ensure that the tissue and cell donation and procurement procedures and the reception of tissues and cells at the tissue establishment comply with the requirements set out in Schedule 4.

(3) A tissue establishment shall ensure that appropriate control measures are in place for the procurement of tissues and cells.

(4) With the exception of partner donation of reproductive cells for direct use, the competent authority shall authorise the procurement of human tissues and cells only when the following requirements are met—

- (a) procurement of human tissues and cells shall be carried out by persons who have successfully completed a training programme specified by a clinical team specialising in the tissues and cells to be procured, or a tissue establishment authorised for procurement;
- (b) the tissue establishment or procurement organisation shall have written agreements with the staff or clinical teams responsible for donor selection, unless they are employed by the same organisation or establishment, specifying the procedures to be followed to assure compliance with the selection criteria for donors set out in Schedule 1;
- (c) the tissue establishment or procurement organisation shall have written agreements with the staff or clinical teams responsible for tissue or cell procurement, unless they are employed by the same establishment or organisation, specifying the type or types of tissues or cells or test samples to be procured and the protocols to be followed;
- (d) there shall be Standard Operating Procedures (SOPs)—
  - (i) for the verification of—
    - (aa) donor identity;
    - (bb) the details of donor or donor family consent or authorisation;
    - (cc) the assessment of the selection criteria for donors as detailed in section 13;
    - (dd) the assessment of the laboratory tests required for donors as detailed in section 13;

- (ii) describing the procedures for procurement, packaging, labelling and transportation of the tissues and cells to the point of arrival at the tissue establishment or, in the case of direct distribution of tissues and cells, to the clinical team responsible for their application, or in the case of tissue or cell samples, to the laboratory for testing, in accordance with Schedule 4;
- (e) procurement shall take place in appropriate facilities, following procedures that minimise bacterial or other contamination of procured tissues and cells, in accordance with Schedule 4;
- (f) procurement materials and equipment shall be managed in accordance with the standards and specifications laid down in point 1.3 of Schedule 4 and with due regard to relevant national and international regulations, standards and guidelines covering the sterilisation of medicines and medical devices. Qualified, sterile instruments and procurement devices shall be used for tissue and cell procurement;
- (g) procurement of tissues and cells from living donors shall take place in an environment that ensures their health, safety and privacy;
- (h) where appropriate, the staff and equipment necessary for body reconstruction of deceased donors shall be provided. Such reconstruction shall be completed effectively;
- (i) the procedures for the procurement of tissues and cells shall be carried out in accordance with the requirements specified in Schedule 4;
- (j) a unique identifying code shall be allocated to the donor and the donated tissues and cells, during procurement or at the tissue establishment, to ensure proper identification of the donor and the traceability of all donated material and the coded data shall be entered in a register maintained for the purpose;
- (k) donor documentation shall be maintained in accordance with point 1.4 of Schedule 4.

**Quality management and notification and reporting to the competent authority of serious adverse events and reactions.**

10.(1) A tissue establishment shall–

- (a) establish and maintain a quality system based on the principles of good practice and in accordance with the requirements set out under Article 28(c) of the principal Directive;
- (b) ensure that all testing and processes are validated;
- (c) take all necessary measures to ensure that the quality system includes at least documentation on the following—
  - (i) SOPs,
  - (ii) guidelines,
  - (iii) training and reference manuals,
  - (iv) reporting forms,
  - (v) donor records, and
  - (vi) information on the final destination of tissues and cells,

and that this documentation is readily available for inspection by the competent authority.

(2) Tissue establishments shall ensure that the data necessary to ensure traceability are in accordance with section 16.

(3) Tissue establishments, through the responsible person, shall notify the competent authority of, and provide the competent authority with, a report analysing the cause of and ensuing outcome of—

- (a) any serious adverse events and reactions, which may influence the quality and safety of tissues and cells and which may be attributable to any prescribed activity; and
- (b) any serious adverse reactions observed during or after clinical applications, which may be linked to the quality and safety of tissues and cells.

(4) A tissue establishments, through the responsible person, shall—

- (a) ensure that an accurate, rapid and verifiable procedure is in place, which will enable the establishment to recall from distribution any product which may be related to any notification referred to in subsection (3);
- (b) keep a record of its activities, including the types and quantities of tissues or cells or both procured, tested, preserved,

processed, stored and distributed, or otherwise disposed of, and on the origin and destination of the tissues and cells intended for human applications, in accordance with Schedule 4; and

- (c) submit an annual report on its activities, which will be publicly accessible, to the competent authority.

(5) All persons using human tissues and cells regulated by this Part shall report any relevant information to establishments engaged in the donation, procurement, testing processing, storage or distribution of human tissue and cells in order to facilitate traceability and ensure quality and safety control.

**Notification of serious adverse reactions.**

11.(1) The competent authority shall ensure that—

- (a) procurement organisations have procedures in place to retain the records of tissues and cells procured and to notify tissue establishments without delay of any serious adverse reactions in the living donor which may influence the quality and safety of tissues and cells;
- (b) organisations responsible for human application of tissues and cells have procedures in place to retain the records of tissues and cells applied and to notify tissue establishments without delay of any serious adverse reactions observed during and after clinical application which may be linked to the quality and safety of tissues and cells; and
- (c) tissue establishments that distribute tissues and cells for human application provide information to the organisation responsible for human application of tissues and cells about how that organisation should report serious adverse reactions as referred to in paragraph (b).

(2) The competent authority shall ensure that tissue establishments—

- (a) have procedures in place to communicate to the competent authority without delay all relevant available information about suspected serious adverse reactions as referred to in subsection (1)(a) and (b); and
- (b) have procedures in place to communicate to the competent authority without delay the conclusion of the investigation to analyse the cause and the ensuing outcome.

(3) The competent authority shall ensure that—



- (a) the responsible person designated under section 8 notifies the competent authority of the information included in the notification set out in Part A of Schedule 7;
- (b) tissue establishments notify the competent authority of the actions taken with respect to other implicated tissues and cells that have been distributed for human applications; and
- (c) tissue establishments notify the competent authority of the conclusion of the investigation, supplying at least the information set out in Part B of Schedule 7.

**Notification of serious adverse events.**

12. The competent authority shall ensure that—

- (a) procurement organisations and tissue establishments have procedures in place to retain the records and to notify tissue establishments without delay of any serious adverse events that occur during procurement which may influence the quality or safety or both of human tissues and cells;
- (b) organisations responsible for human application of tissues and cells have procedures in place to notify tissue establishments without delay of any serious adverse events that may influence the quality and safety of the tissues and cells; and
- (c) tissue establishments provide to the organisation responsible for human application information about how that organisation should report serious adverse events to them that may influence the quality and safety of the tissues and cells.

(2) In the case of assisted reproduction, any type of gamete or embryo misidentification or mix-up shall be considered to be a serious adverse event. All persons or procurement organisations or organisations responsible for human application performing assisted reproduction shall report such events to the supplying tissue establishments for investigation and notification to the competent authority.

(3) The competent authority shall ensure that tissue establishments—

- (a) have procedures in place to communicate to the competent authority without delay all relevant available information about suspected serious adverse events as referred to in subsection (1)(a) and (b); and

- (b) have procedures in place to communicate to the competent authority without delay the conclusion of the investigation to analyse the cause and the ensuing outcome.

(4) The competent authority shall ensure that—

- (a) the responsible person designated under section 8 notifies the competent authority of the information included in the notification set out in Part A of Schedule 8;
- (b) tissue establishments evaluate serious adverse events to identify preventable causes within the process; and
- (c) tissue establishments notify the competent authority of the conclusion of the investigation, supplying at least the information set out in Part B of Schedule 8.

**Donor selection, evaluation and testing criteria.**

13.(1) Tissue establishments shall ensure that—

- (a) donors of tissues and cells, except donors of reproductive cells, undergo the biological tests set out in point 1 of Schedule 2;
- (b) the tests referred to in paragraph (a) are carried out in compliance with the general requirements set out in point 2 of Schedule 2;
- (c) donors of reproductive cells undergo the biological tests set out in points 1, 2 and 3 of Schedule 3; and
- (d) the tests referred to in paragraph (c) are carried out in compliance with the general requirements set out in point 4 of Schedule 3.

(2) Tissue establishments shall ensure that donors comply with the selection criteria set out in—

- (a) Schedule 1 for donors of tissues and cells, except donors of reproductive cells; and
- (b) Schedule 3 for donors of reproductive cells.

(3) Tissues and cells shall not be procured unless the information required under subsection (4) has been provided by the tissue establishment or procurement organisation to the donor (in the case of a living adult donor) or the next of kin (in the case of a deceased donor or a person who is unable to give consent) and informed consent has been given for such procurement.

(4) The person in charge of the donation process in a tissue establishment or procurement organisation, prior to the procurement of such tissues or cells or both, in relation to living donors, shall ensure that—

- (a) the donor, or the donor's next of kin, (in the case of a person who is unable to give consent) has been properly informed of at least those aspects relating to the donation and procurement process outlined in paragraph (c);
- (b) the information is given by a trained person able to transmit it in an appropriate and clear manner, using terms that are easily understood by the donor;
- (c) the information covers—
  - (i) the purpose and nature of the procurement, its consequences and risks,
  - (ii) analytical tests, if they are performed,
  - (iii) recording and protection of donor data,
  - (iv) medical confidentiality,
  - (v) therapeutic purpose and potential benefits,
  - (vi) the applicable safeguards intended to protect the donor;
- (d) the donor is informed that he has the right to receive the confirmed results of the analytical tests, clearly explained; and
- (e) information is given on the necessity for requiring the applicable mandatory consent, certification and authorisation in order that the tissue or cell or both procurement can be carried out.

(5) The person in charge of the donation and procurement processes in a tissue establishment or procurement organisation, prior to the procurement of such tissues or cells or both, in relation to deceased donors, shall ensure that—

- (a) all information is given and all necessary consents and authorisations are obtained in accordance with this Part; and
- (b) the confirmed results of the donor's evaluation are communicated and clearly explained to the relevant persons in accordance with this Part.

(6) The tissue establishment or procurement organisation shall, in relation to the donation and procurement of tissues and cells—

- (a) put and keep in place procedures for the evaluation of donors;
- (b) apply selection and evaluation criteria for all donors of tissues or cells or both in accordance with this section; and
- (c) maintain records of the results of donor evaluations and tests and report to donors any relevant abnormal findings from the evaluations, and tests.

(7) In the case of autologous donation, the suitability criteria of the donor shall be established in accordance with the requirements in point 2.1 of Schedule 1.

**Tissue and cell reception, processing, storage and distribution.**

14.(1) Tissue establishments shall ensure that human tissue and cells and associated documentation comply with the requirements set out in Schedule 4.

(2) Tissue establishments shall ensure that the reception of tissues and cells at the tissue establishment complies with the requirements set out in Schedule 4.

(3) Tissue establishments shall verify and record the fact that the packaging of tissues and cells received complies with the requirements of point 1.5 of Schedule 4.

(4) Tissues and cells that do not comply with point 1.5 of Schedule 4, shall be discarded.

(5) Tissue establishments shall document the acceptance or rejection of received tissues or cells.

(6) Tissue establishments shall ensure that human tissues and cells are correctly identified at all times. Each delivery or batch of tissues or cells shall be assigned an identifying code, in accordance with section 16.

(7) Tissue establishments shall hold tissue and cells in quarantine until such time as the requirements relating to donation, testing and information have been met in accordance with section 13.

(8) Tissue establishments shall—

- (a) include in their SOPs all processes that affect quality and safety and shall ensure that they are carried out under controlled conditions;
- (b) ensure that the equipment used, the working environment and process design, validation and control conditions are in compliance with the requirements in Article 28(h) of the principal Directive;
- (c) ensure that any modifications to the processes used in the preparation of tissues and cells shall also meet the criteria laid down in paragraphs (a) and (b) of this subsection;
- (d) include in their SOPs special provisions for the handling of tissue and cells to be discarded, in order to prevent the contamination of other tissues or cells, the processing environment or personnel;
- (e) ensure that all procedures associated with the storage of tissues and cells are documented in the SOPs and that the storage conditions comply with the requirements under Article 28(h) of the principal Directive;
- (f) ensure that all storage processes are carried out under controlled conditions;
- (g) establish and apply procedures for the control of packaging and storage areas, in order to prevent any situation arising that might adversely affect the functioning or integrity of tissues and cells; and
- (h) not distribute processed tissues or cells until the requirements laid down in this Part are met.

(9) Tissue establishments shall have agreements and procedures in place to ensure that, in the event of termination of activities for whatever reason, stored tissues and cells shall be transferred to other tissue establishment or establishments authorised in accordance with section 6 without prejudice to any Gibraltar law concerning the disposal of donated tissues or cells, according to the consent pertaining to them.

(10) Tissue establishments shall ensure that personnel directly involved in activities relating to the procurement, processing, preservation, storage and distribution of tissues and cells shall be qualified to perform such tasks and shall be provided with the training referred to in Article 28(c) of the principal Directive.

(11) Tissue establishments shall ensure—

- (a) the quality and safety of tissues and cells during distribution; and
- (b) that distribution conditions comply with the requirements referred to in Article 28(h) of the principal Directive.

**Principles governing tissue and cell donation and voluntary unpaid donation.**

15.(1) The Government shall draw up guidelines setting out the conditions under which promotion and publicity activities in support of the donation of human tissues and cells may be carried out. Such guidelines shall include appropriate restrictions or prohibitions on advertising the need for, or availability of, human tissues and cells, with a view to offering or seeking financial gain or comparable advantage.

(2) The guidelines referred to in subsection (1) shall endeavour to ensure that the procurement of tissues and cells is carried out on a non-profit basis.

(3) Tissue establishments shall—

- (a) comply with guidelines laid down for the promotion and publicity activities in support of the donation of human tissues and cells; and
- (b) make every effort to ensure voluntary and unpaid donations of tissues and cells.

(4) Without prejudice to subsection (3), the tissue establishments may make good the expenses and inconveniences related to the donation in accordance with the guidelines.

**Traceability and labelling of tissues and cells.**

16.(1) *Deleted.*

(2) Every tissue establishment shall implement a donor identification system which assigns a unique code to each tissue or cell donation and to each of the products associated with it.

(3) *Deleted.*

(4) *Deleted.*

(5) Every tissue establishment must use a labelling system that contains the information or references allowing a link to the information referred to in Schedule 4 and Article 28(h) of the principal Directive.

(6) Every tissue establishment shall keep such records of the information referred to in Schedule 4 and such additional records as are necessary—

- (a) for the identification and traceability of each single tissue or cell donation and each single tissue or cell unit and its components (including tissues and cells which are imported into the European Union), and products coming into contact with these tissues and cells; and
- (b) to ensure full traceability from donation and procurement, processing or storage to the point of delivery to a hospital or site, and at all stages, for a period of not less than 30 years after clinical use, and data storage may also be in electronic form.

(7) Every tissue establishment shall ensure that the labelling, documentation and packaging on each tissue or cell supplied by it, shall conform to the requirements of this Part.

(8) Tissue establishments and organisations responsible for human application shall retain the data set out in Schedule 10 for at least 30 years, in an appropriate and readable storage medium.

(9) Tissues and cells shall be traceable in particular through documentation and the use of the Single European Code from procurement to human application or disposal and vice versa.

(10) Tissues and cells used for advanced therapy medicinal products shall be traceable under this Act at least until transferred to the manufacturer of the advanced therapy medicinal product.

(11) Procurement teams operating for two or more tissue establishments, which are involved in the retrieval of tissues and cells from deceased donors shall ensure that they have an appropriate traceability system across the procurements.

**Single European Code.**

16A.(1) Subject to subsection (2), and without prejudice to subsection (3), a Single European Code shall be applied to all tissues and cells distributed for human application.

(2) For other situations where tissues and cells are released for circulation, there shall be included as a minimum, the donation identification sequence to be applied at least in the accompanying documentation.

(3) Subsection (1) shall not apply to-

- (a) reproductive cells from partner donation;
- (b) tissues and cells distributed directly for immediate transplantation to the recipient, as referred to in Article 6(5) of the principal Directive;
- (c) tissues and cells imported into the European Union in case of emergency authorised directly by the competent authority, as referred to in Article 9(3)b of the principal Directive.

(4) The Single European Code shall comply with the specifications set out in this section and in Schedule 11.

(5) The Single European Code shall be in eye-readable format and shall be preceded by the acronym “SEC”, although parallel use of other labelling and traceability systems is possible.

(6) The Single European Code shall be printed with the Donation Identification Sequence and Product Identification Sequence separated by a single space or as two successive lines.

(7) Tissue establishments, including importing tissue establishments as defined in the Safety of Imported Human Tissues and Cells Regulations 2017, shall ensure that they-

- (a) allocate a Single European Code to all tissues and cells requiring application of this code at the latest before their distribution for human application;
- (b) allocate a donation identification sequence after procuring the tissues and cells, or when receiving them from a procurement organisation, or when importing tissues and cells from a third country supplier, and the donation identification sequence shall include-
  - (i) their EU tissue establishment code as assigned in the EU Tissue Establishment Compendium;
  - (ii) a unique donation number allocated by the tissue establishment, unless such number is allocated centrally at national level or is a globally unique number as used by the ISBT128 coding system. Where allowed, in case of pooling of tissues and cells, a new donation identification number shall be allocated to the final product; traceability with the individual donations shall be ensured by the tissue establishment in which pooling is carried out;



- (c) do not alter the donation identification sequence once it is allocated to tissues and cells released for circulation, unless it is necessary to correct an encoding error; any correction requires proper documentation;
  - (d) use one of the permitted product coding systems and the corresponding tissue and cell product numbers included in the EU Tissue and Cell Product Compendium at the latest before their distribution for human application;
  - (e) use an appropriate split number and expiry date. For tissues and cells for which no expiry date is defined, the expiry date shall be 00000000 at the latest before their distribution for human application;
  - (f) apply the Single European Code on the label of the product concerned in an indelible and permanent manner and mention that code in the relevant accompanying documentation at the latest before its distribution for human application;
  - (g) notify the competent authority when-
    - (i) information contained in the EU Tissue Establishment Compendium requires an update or correction;
    - (ii) the EU Tissue and Cell Product Compendium requires an update;
    - (iii) the tissue establishment observes a situation of significant non-compliance with the requirements relating to the Single European Code concerning tissues and cells received from other EU tissue establishments;
  - (h) take the necessary measures in case of incorrect application of the Single European Code on the label.
- (8) The tissue establishment may entrust the task in paragraph 16A(7)(f) to a third party, provided the tissue establishment ensures compliance with this Act, in particular in terms of uniqueness of the code.
- (9) In regards to paragraph 16A(7)(f), where the label size precludes the application of the Single European Code on the label, the code shall be unambiguously linked to tissues and cells packaged with such a label through the accompanying documentation;
- (10) The competent authority shall-

- (a) subject to subsections (11) and (12), ensure that a unique tissue establishment number is allocated to all tissue establishments that are authorised, accredited, designated or licensed in Gibraltar;
- (b) decide which system or systems shall be used for the allocation of unique donation numbers;
- (c) monitor and enforce the full implementation of the Single European Code;
- (d) ensure the validation of the data on the tissue establishments contained in the EU Tissue Establishment Compendium and update the Compendium without undue delay in particular in the following situations-
  - (i) when a new tissue establishment is authorised, designated, accredited, or licensed;
  - (ii) when tissue establishment information changes or is not correctly recorded in the EU Tissue Establishment Compendium;
  - (iii) when the accreditation, designation, authorisation or licence details of a tissue establishment, as listed in Schedule 11A, change, including-
    - (A) accreditation, designation, authorisation or licence for a new tissue or cell type;
    - (B) accreditation, designation, authorisation or licence for a new prescribed activity;
    - (C) details of any conditions and or exemptions added to an authorisation;
    - (D) suspension, in part or in full, of a specific accreditation, designation, authorisation or licence for a particular activity or tissue or cell type;
    - (E) revocation, in part or in full, of an accreditation, designation, authorisation or licence for a tissue establishment;
    - (F) situations when a tissue establishment voluntarily ceases, in part or in full, the

activity or activities for which it is authorised, accredited, designated or licensed;

- (e) alert the competent authority of a Member State when they observe incorrect information in the EU Tissue Establishment Compendium relating to the Member State or when they observe a situation of significant non-compliance with the provisions relating to the Single European Code relating to the Member State;
- (f) alert the European Commission and the competent authorities of Member States when in their assessment the EU Tissue and Cell Product Compendium requires an update.

(11) If a tissue establishment has different physical locations, but has one system for allocating unique donation numbers, it may be deemed to be one and the same tissue establishment.

(12) If a tissue establishment uses two or more systems to allocate unique donation numbers, such an entity shall be allocated separate tissue establishment numbers corresponding to the number of allocation systems used.

(13) In this section “without undue delay” means not later than 10 working days for any changes substantially affecting the authorisation, accreditation, designation or licence of the tissue establishments concerned.

(14) The application of the Single European Code does not preclude the additional application of other codes in accordance with Gibraltar requirements.

(15) The following tissues and cells are exempted from the obligations relating to the Single European Code-

- (a) tissues and cells already in storage on 29 October 2016, provided the tissues and cells are released for circulation in the European Union within five years following that date and under the condition that full traceability is ensured by alternative means;
- (b) tissues and cells which remain in storage and which are only released for circulation after the expiry of the five-year period in paragraph (a) and for which the application of the Single European Code is not possible, in particular because the tissues and cells are stored under deep-freeze conditions,

and instead the tissue establishment shall use the procedures applicable to products with small labels as laid down in subsection (9).

**Import and export of human tissues and cells.**

17.(1) The competent authority shall ensure that–

- (a) all imports of tissues and cells from third countries; and
- (b) all exports of tissues and cells to third countries,

are undertaken by authorised tissue establishments.

(2) Tissue establishments shall ensure that imported tissues and cells–

- (a) can be traced from donor to the recipient and vice versa in accordance with the procedures and requirements laid down by section 16; and
- (b) meet standards of quality and safety equivalent to those laid down in this Part.

(3) Tissue establishments shall ensure that all exports to third countries comply with the requirements of this Part.

(4) The competent authority may directly authorise the import or export of–

- (a) tissues and cells referred to in section 6(12)(b); and
- (b) certain tissues and cells, in case of emergency.

(5) The competent authority shall take all necessary measures to ensure that imports and exports of tissues and cells referred to in subsection (4) meet the quality and safety standards equivalent to those laid down in this Part.

**Relations between tissue establishments and third parties.**

18.(1) Tissue establishments shall establish written agreements with a third party each time an external activity takes place which influences the quality and safety of tissues and cells processed in cooperation with a third party, and in particular in the following circumstances–

- (a) where a tissue establishment entrusts one of the stages of tissue or cell processing to a third party;
- (b) where a third party provides goods and services that affect tissue or cell quality and safety assurance, including their distribution;

- (c) where a tissue establishment provides services to a tissue establishment which is not authorised; and
- (d) where a tissue establishment distributes tissue or cells processed by third parties.

(2) Agreements between tissue establishments and third parties shall be examined by the competent authority within the authorisation framework of section 6.

(3) Tissue establishments shall evaluate and select third parties on the basis of their ability to meet the standards laid down in this Part.

(4) Tissue establishments shall keep a complete list of the agreements referred to in subsection (1) that they have established with third parties.

(5) Agreements between tissue establishments and third parties shall specify the responsibilities of third parties and detailed procedures.

(6) Tissue establishments shall provide copies of agreements with third parties at the request of the competent authority.

**Objections to refusals of authorisation or suspension or revocation of authorisation.**

19.(1) A tissue establishment which objects to—

- (a) the refusal of authorisation, or the imposition of any condition under section 6(5); or
- (b) any suspension or revocation of authorisation, or any notice served, under section 6(8) or (7),

may notify the competent authority of its desire to make written representations to, or to appear before and be heard by, a person appointed by the competent authority for that purpose pursuant to subsection (3).

(2) Any notification of an objection under subsection (1) shall be made within 14 days of service on the tissue establishment of the notice to which the notification under subsection (1) relates.

(3) Where the competent authority receives a notification under subsection (1), competent authority shall appoint a person to consider the matter.

(4) The person appointed under subsection (3) shall determine the procedure to be followed with respect to the consideration of any objection.

(5) The person appointed under subsection (3) shall consider any written or oral objections made by the tissue establishment in support of its objection, and shall make a recommendation to the competent authority.

(6) A recommendation made under subsection (5) shall be made in writing to the competent authority, and a copy of it shall be sent to the tissue establishment concerned, or to its nominated representative.

(7) The competent authority shall take into account any recommendation made under subsection (5).

(8) Within 14 days of receipt of any recommendation made under subsection (5), the competent authority shall inform the tissue establishment whether it (the competent authority) accepts the recommendation and, if it does not accept it, of the reasons for its decision.

(9) Subject to subsection (11), where the competent authority is notified of an objection under subsection (1)(b) before the date upon which the suspension or revocation or the notice is due to take effect, the suspension or revocation or notice in respect of which the objection is made shall not take effect until—

- (a) the person appointed under subsection (3) has considered the matter in accordance with the provisions of this section and made a recommendation; and
- (b) the competent authority has informed the tissue establishment concerned of its decision with regard to the recommendation under subsection (8).

(10) Subject to subsection (11), where the competent authority is notified of an objection under subsection (1)(b), within the period specified in subsection (2), to a suspension, revocation or other notice which has already taken effect on the date the notification was made, the suspension, revocation or notice in respect of which the objection is made shall cease to have effect until—

- (a) the person appointed under subsection (3) has considered the matter in accordance with this section and made a recommendation; and
- (b) the competent authority has informed the tissue establishment concerned of its decision with regard to the recommendation under subsection (8).

(11) Subsections (9) and (10) shall not apply—

- (a) in relation to a suspension or revocation, which takes immediate effect in accordance with section 7(3); or
- (b) in any other case, where the competent authority determines that it is necessary in the interests of public safety for the suspension, revocation or notice to take effect on the date originally specified, and serves a notice in writing to that effect on the tissue establishment concerned.

**Disclosure of information by tissue establishments and data protection.**

20.(1) A tissue establishment shall ensure that all information, including genetic information which is collected for the purposes of this Part is held securely so that it is—

- (a) available for the purpose of tracing donations;
- (b) not disclosed except—
  - (i) in accordance with one or more of the requirements of subsection (2); or
  - (ii) where it has been rendered anonymous so that donors and recipients are no longer identifiable; and
- (c) subject to safeguards against unauthorised additions, deletions or modifications to donor files or deferral records and transfer of information.

(2) The requirements of this section are—

- (a) the disclosure is made in accordance with an order of a court or is otherwise required by law;
- (b) the disclosure is to an authorised person; or
- (c) the disclosure is for the purpose of tracing a donation from donor to recipient or recipient to donor.

(3) Where a disclosure is made to an authorised person under subsection (2)(b), the authorised person shall not further disclose the information received unless—

- (a) the disclosure is made in accordance with an order of a court or is otherwise required by law;

- (b) the disclosure is to another authorised person or an officer of the Gibraltar Health Authority where this is necessary for the proper performance of any function of any such officer; or
- (c) the information has been rendered anonymous so that the donors are no longer identifiable.

(4) Where a disclosure is made under subsection (3), the person to whom the disclosure is made shall not further disclose the information he receives other than in accordance with the requirements of that subsection.

(5) The responsible person shall ensure that he puts in place procedures to resolve data discrepancies.

(6) The responsible person shall ensure that the identity of the recipient is not disclosed to the donor or his family and vice versa, without prejudice to any provision of law on the conditions for disclosure, notably in the case of gametes donation.

### **Inspections.**

21.(1) The competent authority shall conduct a regular inspection of each site of a tissue establishment, not less than once every 2 years, for the purpose of ensuring that—

- (a) the procedures and activities carried out by tissue establishments comply with the requirements of this Part;
- (b) documents or other records relating to the requirements of the this Part are examined;
- (c) problems relating to compliance with those requirements are identified; and
- (d) the site complies with the requirements of this Part.

(2) The competent authority may conduct such additional inspections of tissue establishment sites or facilities of third parties, as the competent authority considers necessary for the purpose of ensuring compliance with the requirements of this Part.

(3) The competent authority may also serve a notice on a tissue establishment requiring that it furnish the competent authority with such information concerning its compliance with this Part and as shall be specified in the notice within such period as shall be specified in the notice.



(4) Any tissue establishment which receives a request for information in accordance with subsection (3) shall provide the information requested within the period specified in the notice.

(5) In the event of any serious adverse event or any serious adverse reaction or suspicion thereof, the competent authority shall request such information, conduct such inspections, or carry out control measures, in accordance with this section, as it shall consider appropriate.

(6) Any reference to an inspection of a site which the competent authority is required or empowered to conduct by virtue of this section, shall be construed so as to include an inspection of premises within a Member State at which any of the prescribed activities are carried out by any person on behalf of, and pursuant to a contractual arrangement with, a tissue establishment.

(7) The competent authority's functions under this section in relation to a tissue establishment are also applicable in the case of a tissue establishment seeking authorisation under section 6.

(8) The competent authority, on receipt of a duly justified request from the competent authority in a Member State, shall organise such inspection or carry out control measures.

(9) The competent authority shall, upon the request of a Member State, or the Commission, provide information on the results of inspections and control measures carried out, in relation to the requirements of this Part.

**Authorised persons.**

22.(1) The competent authority—

- (a) may appoint such and so many persons as it (the competent authority) thinks fit to be authorised persons for the purposes of this Part; and
- (b) shall furnish each such authorised person with a warrant of the authorised person's appointment.

(2) An authorised person shall, when performing a function imposed under this Part on an authorised person, produce his warrant for inspection if requested to do so by a person affected by the performance of that function.

(3) For the purposes of enforcing compliance with this Part or conducting inspections under section 19, an authorised person may—

- (a) subject to subsection (5), enter (if necessary by the use of reasonable force), at all reasonable times, any premises at which he has reasonable grounds to believe that it is necessary to visit, including—
  - (i) any premises owned or managed by a tissue establishment, or at which the tissue establishment carries out any prescribed activities,
  - (ii) any premises of any person who carries out any prescribed activities on behalf of, and pursuant to a contractual arrangement with a tissue establishment,
  - (iii) where any facilities for donor evaluation and testing are in the premises of any person other than a tissue establishment, those facilities in that person's premises, and
  - (iv) any premises at which books, records or other documents (including documents stored in non-legible form) relating to any prescribed activities are stored or kept,
- (b) at such premises inspect and take copies of, any books, records, other documents (including documents stored in non-legible form) or extracts therefrom, which he finds in the course of his inspection;
- (c) remove any such books, records or other documents from such premises and detain them for such period as he reasonably considers to be necessary for the purposes of his functions under this Part;
- (d) carry out, or have carried out, such tests, examinations, analyses, inspections and checks of—
  - (i) the premises,
  - (ii) any relevant thing at the premises, or
  - (iii) any equipment, machinery or plant at the premises, as he reasonably considers to be necessary for the purposes of his functions under this Part;
- (e) require any person at the premises or the owner or person in charge of the premises and any person employed there to give to him such assistance and information and to produce to him such books, records or other documents (and in the case of documents stored in non-legible form, produce to him a legible

reproduction thereof) that are in that person's power or procurement, as he may reasonably require for the purposes of his functions under this Part;

- (f) without payment, take samples of any relevant thing found at the premises for the purposes of any test, examination or analysis;
- (g) direct that such relevant thing found at the premises as he, upon reasonable grounds, believes does not comply with the requirements of this Part not be sold or distributed or moved from the premises, without his consent;
- (h) secure for later inspection any premises or part of any premises in which a relevant thing is found or ordinarily kept, or books, records or other documents are found or ordinarily kept, for such period as may reasonably be necessary for the purposes of his functions under this Part;
- (i) without payment, take possession of and remove from the premises for any test, examination or analysis any relevant thing found there, and detain it for such period as he considers reasonably necessary for the purposes of performing his functions under this Part;
- (j) without payment, take samples of any relevant thing, detained under paragraph (i), for the purposes of any test, examination, or analysis; or
- (k) where the taking of samples of any relevant thing under paragraph (f) or (j) is, for whatever reason, not practicable, without payment take the relevant thing concerned for the purposes of any test, examination or analysis.

(4) In performing a function under this Part, an authorised person may, subject to any warrant under subsection (6), be accompanied by any—

- (a) other authorised person; or
- (b) persons with expertise relating to any relevant thing, as he considers appropriate in the circumstances of the case.

(5) An authorised person shall not enter a dwelling, other than—

- (a) with the consent of the occupier; or
- (b) in accordance with a warrant issued under subsection (6).

(6) Upon the application of an authorised person, the Stipendiary Magistrate, if satisfied that there are reasonable grounds for believing that—

- (a) a relevant thing is to be found in any dwelling, or is being or has been subjected to any process or stored in any dwelling;
- (b) books, records or other documents (including documents stored in non-legible form) referred to in subsection (3)(a)(iv) are being stored or kept in any dwelling; or
- (c) a dwelling is occupied in whole or in part by an undertaking carrying out any prescribed activity,

may issue a warrant authorising a police officer accompanied by the applicant and such other authorised persons or persons with expertise relating to any relevant thing, as may be necessary, at any time or times, within one month of the date of issue of the warrant, to enter the dwelling and perform any of the functions of an authorised person under paragraphs (b) to (k) of subsection (3).

(7) Where a police officer or an authorised person, upon reasonable grounds, believes that a person has committed an offence under this Part, he may require that person to provide him with his name and the address at which he ordinarily resides.

(8) A statement or admission made by a person pursuant to a requirement under subsection (3)(e) shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under section 26(6)).

(9) Nothing in this section shall be taken to compel the production by any person of a document of which he would be exempt from production in proceedings in a court on the ground of legal professional privilege.

#### **Taking of samples by authorised persons.**

23.(1) Subject to subsection (3), where an authorised person takes a sample of a relevant thing, he shall—

- (a) divide the sample into 3 approximately equal parts;
- (b) place each part into separate containers; and
- (c) forthwith seal and mark each such container in such a manner as to identify it as part of the sample taken by that authorised person.

(2) Where an authorised person has complied with subsection (1), he shall—

- (a) offer one of the sealed containers to the owner or person for the time being in charge or possession of the relevant thing from which the sample concerned was taken;
- (b) retain one of the sealed containers; and
- (c) forward, or cause to be forwarded, the other sealed containers for test, examination or analysis of the sample.

(3) Where a relevant thing is contained in a container and its division into parts under subsection (1) is, for whatever reason, not practicable, an authorised person, who wishes to take samples of such relevant things for the purposes of any test, examination or analysis, shall take possession of 3 such containers belonging to the same batch, and each such container shall be deemed to be part of a sample for the purposes of subsection (1), and subsections (1) and (2) shall apply to it accordingly.

(4) Where an authorised person takes a relevant thing under section 22(3)(k), he shall—

- (a) place the relevant thing in a container; and
- (b) forthwith seal and mark the container in such a manner as to identify it as a relevant thing taken pursuant to that section.

**Records to be kept by the competent authority.**

24.(1) The competent authority shall keep such records of information which the competent authority receives from, or relating to, tissue establishments as are considered appropriate in accordance with section 14 and shall, in particular, keep records relating to—

- (a) authorisations under section 6;
- (b) the designation of responsible persons under section 8; and
- (c) notification of serious adverse events and serious adverse reactions by tissue establishments under section 10(3); and
- (d) inspections or requests for information under section 19.

(2) The competent authority shall maintain a publicly accessible register of tissue establishments, specifying the activities for which the establishments have been authorised.

(3) The competent authority shall provide the assistance necessary to enable the Commission to establish a network linking all the tissue establishment registers in the Union.

**Communication of information between competent authorities and to the Commission.**

25. The competent authority shall ensure that such information as is appropriate with regard to serious adverse reactions and events is communicated to the competent authorities of Member States and to the Commission in order to guarantee that adequate actions are taken.

**Offences and penalties.**

26.(1) A person who contravenes any of the provisions of section 5(1), 6(9), 8 (other than subsection (3)), 9, 10, 11, 12, 15(3), 16, 17(3) or 19 (4) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale, or to imprisonment for a term not exceeding 6 months, or to both.

(2) Any person who fails to comply with a notice of suspension or revocation of the person's authorisation served under section 7, except where the operation of that notice has been suspended under section 19 or has been withdrawn or revoked by the competent authority, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale, or to a term of imprisonment not exceeding 6 months, or to both.

(3) Any person who knowingly supplies tissue or cells which are not labelled in accordance with the requirements of section 16A shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale, or to a term of imprisonment not exceeding 3 months, or to both.

(4) Any person who—

- (a) contravenes section 20; or
- (b) discloses any information referred to in section 20(1) to which he has access by virtue of this Part, otherwise than in accordance with the provision of section 20(2) and (3),

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale, or to a term of imprisonment not exceeding 3 months, or to both.

(5) Any person who—

- (a) obstructs or interferes with an authorised person or a person with expertise relating to any relevant thing (within the meaning of section 2), in the course of performing a function conferred on him by this Part or a warrant under section 22(6); or
- (b) impedes the performance by the authorised person or person with expertise, of such function or fails or refuses to comply with a request or requirement of, or to answer a question asked by, the authorised person or person with expertise, under section 22;
- (c) in purported compliance with such request or requirement or in answer to such question gives information to the authorised person or person with expertise, that he knows to be false or misleading in any material respect,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale, or to imprisonment for a term not exceeding 3 months, or to both.

(6) A person who falsely represents himself to be an authorised person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale, or to imprisonment for a term not exceeding 3 months, or to both.

(7) Nothing in subsection (5)(b) shall be construed as requiring any person to answer any question or to give any information if to do so might incriminate him or, in the case of a person who is married, his or her spouse.

(8) On conviction for an offence under this Part (including an offence under section 27), the court may, in addition to any other penalty—

- (a) order any relevant thing (within the meaning of section 2) to which the offence relates to be forfeited to the competent authority for destruction or other disposal as the competent authority thinks fit;
- (b) upon application made to it by or on behalf of the competent authority, order the person convicted of the offence to pay to the relevant person all or part of the costs of such destruction or other disposal subject to such conditions, if any, as are specified in the order.

**Offence to import below standard tissues and cells into Gibraltar.**

27. Any person who imports into Gibraltar any tissues or cells (including tissues or cells intended for use as a starting material or raw material in

manufactured products) from a country or territory outside the European Union which do not meet standards of quality and safety equivalent to those laid down in this Part is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale, or to imprisonment for a term not exceeding 6 months, or to both.

**Reports by the competent authority.**

28.(1) The competent authority shall ensure that, as soon as practicably possible after the coming into operation of this Part, a report is sent to the Commission on the activities undertaken in relation to the provisions of this Part, including an account of the measures taken in relation to inspection and control. A further such report shall be sent to the Commission on 7 April 2012 and thereafter at regular intervals of three years.

(2) The competent authority shall—

- (a) ensure that each year, and by 30 June of the following year, a report is submitted to the Commission on the notification of serious adverse reactions and events received by the competent authority; and
- (b) make this report available to tissue establishments.

(3) Any data transmission under this Part shall—

- (a) comply with the data exchange format specifications as set out in Schedule 9, Part A and B; and
- (b) provide all the information necessary to identify the sender and maintain its reference data.

**PART 2  
HUMAN ORGANS**

**Subject matter and application of this Part.**

28A.(1) This Part sets the standards of quality and safety for human organs intended for transplantation to the human body, in order to ensure a high level of human health protection.

(2) This Part applies to the donation, testing, characterisation, procurement, preservation, transport and transplantation of human organs intended for transplantation.

(3) Where human organs are used for research purposes, this Part only applies where they are intended for transplantation into the human body.



**Interpretation of Part 2.**

28B. In this Part, unless the context otherwise requires—

“Authority” means the competent authority within the meaning of section 1B;

“designated individual”, in relation to a licence under section 28E, means the individual designated in the licence as the person under whose supervision the licensed activity is authorised to be carried on;

“disposal” means the final placement of an organ where it is not used for transplantation;

“donation” means donating organs for the purposes of transplantation;

“donor” means a person who donates one or several organs, whether donation occurs during lifetime or after death;

“donor characterisation” means the collection of relevant information on the characteristics of the donor needed to evaluate the donor’s suitability for organ donation, in order to undertake a proper risk assessment and to minimise the risks for the recipient, and optimise organ allocation;

“duly authorised person”, in the context of any provision, means a person authorised by the Authority to act for the purposes of that provision;

“European organ exchange organisation” means a non-profit organisation, whether public or private, dedicated to national and cross-border organ exchange, in which the majority of its member countries are Member States;

“licence holder” means a person who holds a licence granted under section 28E;

“licensed activity”, in relation to a licence, means an activity which the licence authorises under section 28E;

“organ” means a differentiated part of the human body, formed by different tissues, that maintains its structure, vascularisation, and capacity to develop physiological functions with a significant level of autonomy and a part of an organ is also considered to be an organ if its function is to be used for the same purpose as the entire organ in the human body, maintaining the requirements of structure and vascularisation;

“organ characterisation” means the collection of the relevant information on the characteristics of the organ needed to evaluate its suitability for transplantation, in order to undertake a proper risk assessment and minimise the risks for the recipient, and optimise organ allocation;

“Organ Directive” means Directive 2010/53/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation as amended from time to time;

“operating procedures” means written instructions describing the steps in a specific process, including the materials and methods to be used and the expected end outcome;

“preservation” means the use of chemical agents, alterations in environmental conditions or other means to prevent or retard biological or physical deterioration of organs from procurement to transplantation;

“procurement” means a process by which a donated organ becomes available for transplantation;

“procurement activity” means any of the following activities, undertaken for the purposes of procurement—

- (a) donor characterisation;
- (b) organ characterisation;
- (c) preservation of an organ;
- (d) making arrangements to transport an organ; or
- (e) retrieval of an organ;

“procurement organisation” means a healthcare establishment, a team or a unit of a hospital, a person, or any other body which undertakes or coordinates the procurement of organs, and is authorised to do so by the Authority;

“recipient” means a person who receives a transplant of an organ;

“serious adverse event” means any undesired and unexpected occurrence associated with any stage of the chain from donation to transplantation that might lead to the transmission of a communicable disease, to death or life-threatening, disabling or

incapacitating conditions for patients or which results in, or prolongs, hospitalisation or morbidity;

“serious adverse reaction” means an unintended response, including a communicable disease, in the living donor or in the recipient that might be associated with any stage of the chain from donation to transplantation that is fatal, life-threatening, disabling, incapacitating, or which results in, or prolongs, hospitalisation or morbidity;

“traceability” means the ability to locate and identify the organ at each stage in the chain from donation to transplantation or disposal, including the ability to—

- (a) identify the donor and the licence holder who retrieved the organ from the donor;
- (b) identify the licence holder who implanted the organ in the recipient;
- (c) identify the recipient at the premises that the organ is implanted into the recipient; and
- (d) locate and identify all relevant non-personal information relating to products and materials coming into contact with that organ;

“transplantation” means a process which is intended to restore certain functions of the human body by transferring an organ from a donor to a recipient; and

“transplantation activity” means any of the following activities, undertaken for the purposes of transplantation—

- (a) donor characterisation;
- (b) organ characterisation;
- (c) preservation of an organ;
- (d) making arrangements to transport an organ; or
- (e) implantation of an organ;

“transplantation centre” means a healthcare establishment, a team or a unit of a hospital or any other body which undertakes the transplantation of organs and is authorised to do so by the Authority.

**Framework and compliance with licensing conditions and directions.**

28C.(1) The Authority shall establish and keep updated a Framework which shall specify how the requirements for the quality and safety of organs for transplantation shall be ensured to secure compliance with the Organ Directive.

(2) The Framework shall–

- (a) cover all stages of the chain from donation to transplantation or disposal; and
- (b) include information about the–
  - (i) procurement activities and transplantation activities that are required to be carried on under the authority of a licence granted under section 28E,
  - (ii) licensing application process,
  - (iii) requirements that licensees must comply with, including the licensing conditions and any directions that the Authority has given under section 28H(4) to (7), and
  - (iv) guidance that the Authority has given under section 28H(1) to (3).

(3) The Framework shall provide for the adoption and implementation of operating procedures for–

- (a) the verification of donor identity;
- (b) the verification of the details of the donor's or the donor's family's consent, authorisation or absence of any objection;
- (c) the verification of the completion of the organ and donor characterisation;
- (d) the procurement, preservation, packaging and labelling of organs;
- (e) the transportation of organs;
- (f) ensuring traceability, guaranteeing compliance with the European Union and Gibraltar provisions on the protection of personal data and confidentiality;

- (g) the accurate, rapid and verifiable reporting of serious adverse events and reactions; and
- (h) the management of serious adverse events and reactions,

in accordance with the provisions in this Part.

(4) The operating procedures referred to in paragraphs (f), (g) and (h) shall specify, inter alia, the responsibilities of procurement organisations, European organ exchange organisations and transplantation centres.

(5) The Authority shall—

- (a) ensure that the healthcare personnel involved at all stages of the chain from donation to transplantation or disposal are suitably qualified or trained and competent; and
- (b) develop specific training programmes for such personnel.

**Licensing requirement for procurement and transplantation activity.**

28D.(1) No person shall carry out a procurement activity or a transplantation activity otherwise than under the authority of a licence granted under section 28E.

(2) A person who contravenes subsection (1) commits an offence unless that person reasonably believes that—

- (a) the activity being undertaken is not an activity to which subsection (1) applies; or
- (b) he is acting under the authority of a licence granted under section 28E.

**Granting of licences.**

28E.(1) The Authority may, on the application of any person, grant a licence for the purposes of section 28D.

(2) A licence granted under subsection (1) must—

- (a) designate an individual as the designated individual; and
- (b) not authorise a procurement activity or a transplantation activity to be carried on under the supervision of more than one such individual.

(3) A licence granted under this section must include at least the following conditions—

- (a) that the licensed activities shall be carried on only under the supervision of the designated individual;
- (b) that the procurement activity or the transplantation activity—
  - (i) shall have in place operating procedures for the management of a serious adverse event or a serious adverse reaction,
  - (ii) shall ensure to rapidly report to the Authority—
    - (A) any serious adverse event that may influence the quality and safety of an organ, or any serious adverse reaction observed during or after transplantation, which may be attributed to the testing, characterisation, procurement, preservation and transport of an organ, and

- (B) the management measures taken with regard to such a serious adverse event or reaction;
  - (c) that the healthcare personnel directly involved in the chain from donation to the transplantation or disposal of an organ are suitably qualified or trained and competent to perform their tasks and are provided with relevant training;
  - (d) that training programmes are developed for the personnel referred to in subparagraph (c);
  - (e) that the data required to ensure the traceability of organs is kept for 30 years from the date of the retrieval of the organ;
  - (f) to comply with the Data Protection Act 2004; and
  - (g) to have in place operating procedures demonstrating how the requirements in paragraphs (b), (e) and (f) shall be complied with.
- (4) A licence granted under this section must require for a procurement activity–
- (a) that medical activities are performed under the advice and guidance of a registered medical practitioner;
  - (b) that procurement material and equipment which could affect the quality and safety of an organ are managed in accordance with relevant European Union or other international obligations and Gibraltar legislation, standards and guidelines on the sterilisation of medical devices; and
  - (c) to have in place operating procedures demonstrating how the requirements in paragraphs (a) and (b) shall be complied with.
- (5) It shall be a condition of a licence for the procurement activity of retrieval of an organ–
- (a) that the retrieval take place in an operating theatre which is designed, constructed, maintained and operated in accordance with adequate standards and best medical practices so as to ensure the quality and safety of the organs procured;
  - (b) to make endeavours to follow-up a living donor for the purposes of identifying and managing any event potentially relating to the quality and safety of the donated organ and any

serious adverse reaction in the living donor that may result from the donation;

- (c) to identify, report to the Authority, and manage any event or reaction referred to in paragraph (b); and
- (d) to have in place operating procedures demonstrating how the requirement in paragraph (a) shall be complied with.

(6) A licence granted under this section must require for a procurement activity or transplantation activity of donor characterisation or organ characterisation to ensure—

- (a) that a registered medical practitioner, or a person acting under the supervision of a registered medical practitioner, has endeavoured to obtain—
  - (i) all necessary information from the living person and for that purpose has provided that person with the information that person needs to understand the consequences of donation, or
  - (ii) where possible and appropriate in the case of a deceased donor, such information from relatives of the deceased donor or other persons and has explained to such persons the importance of swift transmission of that information;
- (b) subject to subsection (8), that donors and organs are characterised before implantation by—
  - (i) the collection of at least the information specified in Part A of Schedule 12, and
  - (ii) where considered appropriate by a registered medical practitioner, or a person acting under the supervision of a registered medical practitioner, the collection of the information specified in Part B of Schedule 12;
- (c) that tests required for donor and organ characterisation are carried out by laboratories with suitably qualified or trained and competent personnel and adequate facilities and equipment; and
- (d) that any organisation, body or laboratory involved in organ and donor characterisation has appropriate operating procedures in place to ensure that information on organ and donor characterisation reaches the person who will be implanting an



organ in a recipient within a time period that would not compromise the quality and safety of the organ.

(7) It shall be a condition of a licence for the transplantation activity of implantation—

- (a) that, subject to subsection (8), the following are verified before proceeding to implant an organ in a recipient—
  - (i) identification and consent of the donor,
  - (ii) the collection of information prescribed in subsection (6)(b), and
  - (iii) compliance with the conditions in subsection (9) about the preservation and transportation of shipped organs; and
- (b) to have in place operating procedures demonstrating how the requirements in paragraph (a)(i) and (ii) shall be complied with.

(8) Where any of the information specified in Part A of Schedule 12 is not available, it shall be a licensing condition for the transplantation activity of implantation to be permissible following the conduct of a risk-benefit analysis to determine whether the expected benefits for the recipient of the organ outweigh the risks posed by the lack of any information and the particular circumstances of the case.

(9) It shall be a condition of a licence for a procurement activity or a transplantation activity making arrangements to transport an organ—

- (a) that appropriate procedures are in place to ensure the integrity of the organ during transport and that the transport time is suitable to ensure the quality and safety of the organ;
- (b) that, subject to subsection (10), the shipping containers used for transporting organs are labelled with the following information—
  - (i) identification of the licence holder who retrieved the organ and the place where the retrieval took place, including their addresses and telephone numbers,
  - (ii) identification of the place that an organ will be implanted in a recipient, including its address and telephone number,

- (iii) a statement that the package contains an organ, specifying the type of organ and, where applicable, its left or right location and marked “HANDLE WITH CARE”, and
- (iv) recommended transport conditions, including instructions for keeping the container at an appropriate temperature and position;
- (c) that the organs transported are accompanied by a report on the organ and donor characterisation; and
- (d) to have in place operating procedures demonstrating how the requirements in subparagraphs (a) to (c) shall be complied with.

(10) The conditions in subsection (9)(b) do not apply where transportation is carried out in the same establishment.

(11) The Authority shall specify in the licence granted under this section as to which procurement activity or transplantation activity a licence holder may undertake.

(12) The Authority shall permit a person making an application for two or more—

- (a) procurement activities;
- (b) transplantation activities; or
- (c) procurement activities and transplantation activities,

to make a single application in respect of the activities.

**Preconditions to grant of a licence.**

28F.(1) The Authority may not grant a licence under section 28E unless the requirements set out in this section are met.

(2) In the application for a licence, an individual must be designated who shall—

- (a) be the applicant for the licence; or
- (b) consent to an application for a licence.

(3) The Authority must be satisfied that the proposed designated individual—

- (a) is a suitable person to supervise the activity to be authorised by the licence;
- (b) will perform the duty imposed by section 28E;
- (c) either—
  - (i) has a diploma, certificate or other evidence of formal qualification in the fields of medical or biological sciences awarded on completion of a university course of study, or other courses of study recognised in Gibraltar as equivalent, or
  - (ii) is otherwise considered by the Authority to be suitably qualified on the basis of academic qualification and practical experience; and
- (d) has at least two years' practical experience which is directly relevant to the activity to be authorised by the licence.

(4) Where the applicant for the licence is not the proposed designated individual, the Authority must be satisfied that the applicant is a suitable person to be the holder of the licence.

(5) The Authority must be satisfied that the premises in which an applicant seeks to carry out the procurement activity of retrieval or the transplantation activity of implantation are suitable for the carrying out of that activity and it complies with the provisions of this Part and the Organ Directive.

(6) The Authority must be satisfied that the applicant meets—

- (a) the relevant conditions in section 28E and will continue to do so; and
- (b) any other conditions or requirements that the Authority has imposed.

(7) A copy of the conditions to be imposed by the licence must have been shown to, and acknowledged in writing by—

- (a) the applicant for the licence; and
- (b) where different, the proposed designated individual.

(8) In this section, references to the proposed designated individual are to the individual whom the application proposes that the licence should

designate as the person under whose supervision the activity to be authorised is to be carried on.

- (9) It shall be the duty of a designated individual to secure that—
- (a) the other persons to whom the licence applies are suitable persons to participate in the carrying-on of the licensed activity;
  - (b) suitable practices are used in the course of carrying on that activity; and
  - (c) conditions of the licence are complied with.

(10) The designated individual and licence holder shall take all necessary measures to ensure the highest possible protection of living donors in order to fully guarantee the quality and safety of organs for transplantation.

**Consequences of failure, etc.**

28G.(1) Where an inspection under this Part demonstrates that the designated person or the licence holder has failed to comply with the conditions of the licence, the Authority may—

- (a) suspend the licence for a period not exceeding 6 months;
- (b) withdraw the licence permanently; or
- (c) prohibit the licence holder from carrying on any licensed activity until the failures or defects are remedied.

(2) The Authority shall not take any action under subsection (1) unless the licence holder and the designated individual are given a notice to show cause within seven days and his explanations are considered.

(3) A person aggrieved by a decision of the Authority under this section may appeal to the Supreme Court within thirty days and the decision of the Supreme Court shall be final.

**Guidance and directions.**

28H.(1) The Authority shall publish such guidance to licence holders, designated individuals, and healthcare personnel referred to in section 28E(3)(c) as it considers necessary to ensure compliance with the Organ Directive.

(2) The Authority shall keep the guidance published under subsection (1) under review and prepare revised guidance when it considers necessary.

(3) The Authority shall publish the guidance under this section in such a way as, in its opinion, is likely to bring it to the attention of licensees.

(4) A guidance published under this section must include guidance for the collection of relevant post-transplantation information to evaluate the quality and safety of the organs transplanted.

(5) The Authority may give directions for any purpose for which directions may be given under this Part.

(6) Any power under this Part to give directions—

- (a) includes power to vary or revoke directions given in previous exercise of the power; and
- (b) is exercisable by instrument in writing.

(7) Directions under this Part—

- (a) to a particular person, shall be given by serving notice of the directions on the person; and
- (b) in respect of any licence (including one which has ceased to have effect) may be given—
  - (i) by serving notice of the directions on the person who is (or was immediately before the cessation) the designated individual or holder of the licence, or
  - (ii) if it appears to the Authority that it is not practicable to give notice in that way, by publishing the directions in such way as, in its opinion, is likely to bring them to the attention of the persons to whom they are applicable.

(8) Directions under this Part which appear to the Authority to be general directions may be given by publishing them as mentioned in subsection (7)(b)(ii).

**Records, reports and information.**

28I.(1) The Authority shall—

- (a) in accordance with the provisions of the Data Protection Act 2004 and any applicable European Union measure, keep a record of activities that licence holders are carrying on, which shall include—
  - (i) the aggregate number of living and deceased donors, and

- (ii) the types and quantities of organs procured and transplanted, or otherwise disposed of;
- (b) publish an annual report on the activities referred to in paragraph (a); and
- (c) establish and keep updated a record of persons who carry out a procurement activity or a transplantation activity.

(2) The Authority shall, upon the request of the Commission or any Member State provide information on—

- (a) the requirements in Gibraltar for the authorisation of—
  - (i) procurement organisations;
  - (ii) transplantation centres; and
- (b) the record of procurement organisations and transplantation centres.

#### **The principles of organ donation.**

28J.(1) The Authority shall ensure that every donation of organs from a deceased or a living person must be voluntary and unpaid.

(2) A living donor may be paid compensation to make good the expenses and loss of income related to the donation which must not be such as to become financial incentives or benefit for a potential donor.

(3) No person shall advertise the need for, or availability of, organs where that advertisement is with a view to offering or seeking financial gain or a comparable advantage.

(4) The Authority shall ensure that the procurement of organs is carried out on a non-profit basis.

#### **The quality and safety of living donation.**

28K.(1) Every living donor must be selected by suitably qualified or trained and competent professionals on the basis of an assessment of the health and medical history of that living donor.

(2) An assessment referred to in subsection (1) may provide for the exclusion of persons whose donation could present unacceptable health risks.

(3) The Authority shall keep a record or register of living donors for the purposes of ensuring the follow up of living donors, in accordance with the Data Protection Act 2004 and any applicable European Union measure relating to the protection of personal data and statistical confidentiality.

(4) The Authority shall make arrangements which—

- (a) ensure that reasonable endeavours are made to follow-up all living donors for the purposes of identifying and managing any event potentially relating to the quality and safety of the donated organ and any serious adverse reaction in the living donor that may result from the donation; and
- (b) identify, report and manage any event or reaction identified under paragraph (a).

(5) In subsection (4), a relevant donor means a living donor from whom the person who has ceased to be licensed retrieved an organ.

(6) The provisions of this section shall be applied so as to ensure the highest possible protection of living donors in order to fully guarantee the quality and safety of organs for transplantation.

**Serious adverse events and serious adverse reactions.**

28L.(1) The Authority shall ensure that there is a reporting system in place to report, investigate, register and transmit relevant and necessary information concerning serious adverse events that may influence the quality and safety of organs and that may be attributed to the testing, characterisation, procurement, preservation and transport of organs, as well as any serious adverse reaction observed during or after transplantation which may be connected to those activities.

(2) For the purposes of subsection (1), the Authority shall ensure that there is an operating procedure in place for the management of serious adverse events and reactions as provided for in the framework for quality and safety.

(3) The operating procedure referred to in subsection (2) must include a system for the notification, in due time, of—

- (a) any serious adverse event and reaction to the Authority and to the concerned procurement organisation or transplantation centre; and
- (b) the management measures with regard to serious adverse events and reactions to the Authority.

(4) For the purposes of this section, when a licence holder reports a serious adverse event or a serious adverse reaction to the Authority, or the

Authority is otherwise made aware of such an event or reaction, the Authority shall—

- (a) rapidly notify that information to such persons that the Authority considers may be affected by that information;
- (b) investigate the matter where the Authority considers that an investigation will promote the quality and safety of organs; and
- (c) register that information.

(5) There shall be an interconnection between the reporting system established under this section and the notification system established in accordance with sections 11 and 12.

**Traceability.**

28M.(1) The Authority shall ensure that a traceability system is established for the purposes of ensuring—

- (a) that all organs procured, allocated and transplanted in Gibraltar can be traced from the donor to the recipient and vice versa in order to safeguard the health of donors and recipients; and
- (b) notification of serious adverse events or reactions in accordance with section 28L(1)(a).

(2) The Authority shall ensure—

- (a) the implementation of a donor and recipient identification system in Gibraltar that can identify each donation and each of the organs and recipients associated with it; and
- (b) that confidentiality and data security measures are in place with regard to such a system in compliance with European Union law and the Data Protection Act 2004.

(3) The Authority shall ensure that—

- (a) any person who is licensed to carry out a procurement activity or a transplantation activity that is involved in the chain from donation to transplantation or disposal keeps the data needed to ensure traceability at all stages of the chain from donation to transplantation or disposal and the information on organ and donor characterisation as specified in Schedule 12, in accordance with the framework for quality and safety;



- (b) data required for full traceability is kept for a minimum of 30 years after donation and that data may be stored in electronic form.

(4) Where any person who is licensed to carry out a procurement activity or a transplantation activity ceases to be licensed, the Authority shall make arrangements to ensure that the data collected by that person under the licensing condition pursuant to section 28E (3) (e) is kept for 30 years from the date of the retrieval of the organ.

**Organs sent to another country.**

28N.(1) Where an organ is sent to a Member State, the Authority shall ensure that—

- (a) information on organ and donor characterisation that is specified in Part A of Schedule 12 is transmitted to that State;
- (b) such information in Part B of the Schedule 12 that has been collected by a registered medical practitioner or a person acting under their supervision; and
- (c) information to ensure the traceability of the organ is transmitted to that State in conformity with procedures established by the Commission under Article 29 of the Organ Directive.

(2) Where an organ is sent to, or received from, a Member State, the Authority shall ensure the reporting of serious adverse events and reactions in conformity with procedures established by the Commission under Article 29 of the Organ Directive.

(3) The Authority shall ensure that any organs sent to, or received from, countries which are not in the European Union can—

- (a) be traced from the donor to the recipient; and
- (b) meet quality and safety standards that are equivalent to those required by this Part.

(4) For the purposes of subsection (3), the Authority may enter into agreements with countries that are not in the European Union.

**The Authority and European organ exchange organisations.**

28O.(1) The Authority as defined in section 28B(1) is designated the competent authority for the purposes of Article 17 of the Organ Directive.

- (2) The Authority shall, whenever reasonably practicable—
- (a) participate in the network of competent authorities established by the European Commission; and
  - (b) co-ordinate Gibraltar's input into the activities of that network.
- (3) The Authority may conclude agreements with European organ exchange organisations, if such organisations ensure compliance with the requirements of this Part, delegating to those organisations—
- (a) the performance of activities provided for under the framework for quality and safety;
  - (b) specific tasks in relation to the exchanges of organs to and from Gibraltar and third countries.
- (4) The Authority shall supervise each organ exchange with third countries.
- (5) For the purpose of subsection (4), the Authority and the European organ exchange organisations may conclude agreements with counterparts in third countries.
- (6) The Authority may delegate the supervision of organ exchange with third countries to European organ exchange organisations.
- (7) Organ exchange with third countries shall be allowed only where the organs—
- (a) can be traced from the donor to the recipient and vice versa; and
  - (b) meet quality and safety requirements equivalent to those laid down in the Organ Directive.

**Control and audit by way of inspections.**

28P.(1) The Authority shall put in place an inspection regime for the regular inspection of procurement organisations and transplantation centres in order to ascertain compliance with the requirements of this Part.

(2) For the purposes of subsection (1), a duly authorised person may require a person to produce for inspection any documents relevant for compliance with this Part.

(3) Where records or documents to which subsection (2) applies are stored in electronic form, the power under this section includes power to require

the records or documents to be made available for inspection in a visible and legible form or in a form from which they can readily be produced in a visible and legible form.

(4) A duly authorised person may inspect and take copies of any documents produced for inspection in pursuance of a requirement under subsection (2).

(5) For the purposes of subsection (1), the Authority may arrange for any premises in which a licensed activity is being carried out to be inspected on its behalf, and for a report of the inspection to be made to it, for the purpose of ensuring compliance—

- (a) with this Part;
- (b) with the conditions of the licence; and
- (c) by the designated individual with the duty under section 28F(9).

(6) If a justice of the peace is satisfied on sworn information that there are reasonable grounds for believing that—

- (a) an offence under this Part is being, or has been, committed on any premises; and
- (b) any of the conditions in subsection (7) is met in relation to the premises,

he may, by a signed warrant, authorise a duly authorised person to enter the premises, if need be by force, and search them.

(7) The conditions referred to in subsection (6) are that—

- (a) entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant under this section has been given to the occupier;
- (b) the premises are unoccupied;
- (c) the occupier is temporarily absent; or
- (d) an application for admission to the premises or the giving of notice of the intention to apply for a warrant under this subsection would defeat the object of entry.

(8) A warrant under this section shall continue in force until the end of the period of 31 days beginning with the day on which it is issued.

(9) Entry and search under a warrant under this section is unlawful if any of subsections (10) to (12) and (14) is not complied with.

(10) Entry and search shall be at a reasonable time unless the person exercising the warrant thinks that the purpose of the search may be frustrated on an entry at a reasonable time.

(11) If the occupier of the premises to which the warrant relates is present when the person executing the warrant seeks to enter them, the person executing the warrant shall—

- (a) produce the warrant to the occupier; and
- (b) give the occupier—
  - (i) a copy of the warrant, and
  - (ii) an appropriate statement.

(12) If the occupier of the premises to which the warrant relates is not present when the person executing the warrant seeks to enter them, but some other person is present who appears to the person executing the warrant to be in charge of the premises, the person executing the warrant shall—

- (a) produce the warrant to that other person;
- (b) give that other person—
  - (i) a copy of the warrant,
  - (ii) an appropriate statement, and
- (c) leave a copy of the warrant in a prominent place on the premises.

(13) In subsections (11)(b)(ii) and (12)(b)(ii) the references to an appropriate statement are to a statement in writing containing the information set out section 28Q.

(14) If premises to which the warrant relates are unoccupied, the person executing the warrant shall leave a copy of it in a prominent place on the premises.

(15) Where the premises in relation to which a warrant under this section is executed are unoccupied, or the occupier is temporarily absent and no other person is present who appears to the person executing the warrant to

be in charge of the premises, the person executing the warrant shall, when leaving the premises, leave them as effectively secured as the person executing the warrant found them.

**Appropriate statements.**

28Q. An appropriate statement for the purposes of section 28P must contain the following information–

- (a) a statement that the duly authorised person has been authorised by the Authority for the purposes of section 28P;
- (b) a statement that the duly authorised person’s rights of entry and search are subject to that person producing evidence of entitlement to exercise them, if required;
- (c) a statement that the duly authorised person is entitled, if need be, to enter premises by force;
- (d) a description of the duly authorised person’s powers under section 28R(2) to (4) of inspection and seizure of property;
- (e) a description of the requirement under section 28R(5) for the duly authorised person to leave a statement giving particulars of what the duly authorised person has seized and a statement of what has been seized;
- (f) a description of the powers of the duly authorised person–
  - (i) under section 28R(6), to bring with the duly authorised person such other persons and equipment as is considered by the duly authorised person necessary, and
  - (ii) under section 28R(7), to inspect equipment and inspect and take copies of records, and in the case of premises in respect of which a licence under this Part is in force, to observe the carrying-on of licensed activity;
- (g) a description of the duly authorised person’s obligations under section 28S(2) to prepare a written report of the search and, if requested to do so by the appropriate person, give the appropriate person a copy of the report; and
- (h) a statement that a person commits an offence under section 28U if that person fails without reasonable excuse to comply with requirements under section 28R(8).

**Seizure in the course of inspection or search.**

28R.(1) A duly authorised person entering and inspecting premises under this Part may seize anything on the premises which the duly authorised person has reasonable grounds to believe may be required for purposes of the Authority's functions relating to the grant, revocation, variation and suspension of licences under this Part and to the investigation of serious adverse events and serious adverse reactions.

(2) A duly authorised person entering and searching premises under a warrant under section 28P may seize anything on the premises which he has reasonable grounds to believe may be required for the purpose of being used in evidence in any proceedings for an offence under this Part.

(3) Where a person has power under subsection (1) or (2) to seize anything, that person may take such steps as appear to be necessary for preserving the thing or preventing interference with it.

(4) The power under subsection (1) or (2) includes a power to retain anything seized in the exercise of the power for so long as it may be required for the purpose for which it was seized.

(5) Where by virtue of subsection (1) or (2) a person seizes anything, that person shall leave on the premises from which the thing was seized a statement giving particulars of what has been seized and stating the name of the person who has seized it.

(6) Any power under this Part to enter and inspect or search any premises includes a power to take such other persons and equipment as the person exercising the power reasonably considers necessary.

(7) Any power under section 28P or 28Q to inspect or search any premises includes, in particular—

- (a) power to inspect any equipment found on the premises;
- (b) power to inspect and take copies of any records found on the premises; and
- (c) in the case of premises in respect of which a licence under section 28E is in force, power to observe the carrying-on on the premises of the licensed activity.

(8) Any power under this Part to enter, inspect or search premises includes power to require any person to afford such facilities and assistance with respect to matters under that person's control as are necessary to enable the power of entry, inspection or search to be exercised.

**Requirements when exercising power of inspection or search.**

28S.(1) A person's right to exercise a power under this Part is subject to that person producing evidence of their entitlement to exercise it, if required.

(2) As soon as reasonably practicable after having exercised a power under this Part to inspect or search premises, the duly authorised person shall—

- (a) prepare a written report of the inspection or search; and
- (b) if requested to do so by the appropriate person, give the appropriate person a copy of the report.

(3) In subsection (2), the “appropriate person”, in relation to premises where a licensed activity is being carried out, means the designated individual or the licence holder.

**Protection of personal data, confidentiality and security of processing.**

28T.(1) The holder of a licence issued under this Part shall ensure that the fundamental right to protection of personal data is fully and effectively protected in all organ donation and transplantation activities, in accordance with the Data Protection Act 2004.

(2) The holder of a licence issued under this Part shall take all necessary measures to ensure that—

- (a) the data processed are kept confidential and secure in accordance with the Data Protection Act 2004;
- (b) donors and recipients whose data are processed within the scope of this Part are not identifiable, except as permitted by the Data Protection Act 2004; and
- (c) the principles relating to data quality, as set out in the Data Protection Act 2004 are met.

**Offences and penalties.**

28U.(1) A person who contravenes section 28D, commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding level 5 on the standard scale; or
- (b) on conviction on indictment—

- (i) to imprisonment for a term not exceeding 2 years,
  - (ii) to a fine, or
  - (iii) to both.
- (2) A person commits an offence if that person-
- (a) fails without reasonable excuse to comply with a requirement under section 28P(2); or
  - (b) intentionally obstructs the exercise of any right or powers under sections 28P or 28R.
- (3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) A person commits an offence if that person in contravention of section 28T-
- (a) accesses any data or systems that makes identification of donor or recipients possible; or
  - (b) uses any system or data that makes the identification of donors or recipients possible with a view to tracing donors or recipients other than for the purposes permitted by the Data Protection Act 2004.
- (5) A person who commits an offence under subsection (4) is liable-
- (a) on summary conviction, to a fine not exceeding level 4 on the standard scale; or
  - (b) on conviction on indictment to a fine not exceeding level 5 on the standard scale.
- (6) Where a person is convicted of an offence under subsection (4), the court may order any data material which appears to the court to be connected with the commission of the offence to be forfeited or destroyed and any relevant data to be erased.
- (7) The court shall not make an order under subsection (6) in relation to data material or data where it considers that some person other than the person convicted of the offence may be the owner of, or otherwise interested in, the data unless such steps as are reasonably practicable have been taken for notifying that person and giving him an opportunity to show cause why the order should not be made.



**Offences by bodies corporate.**

28V.(1) Where an offence under this Part is committed by a body corporate 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) any director, manager, secretary 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) commits the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body corporate.

**Reports to the Commission.**

28W. The Authority shall ensure that a report is sent to the Commission before 27 August 2013 and every three years thereafter on the activities undertaken in relation to the provisions of the Organ Directive, and on experience gained in implementing it.

**Consent for donation after death.**

28X.(1) Subject to subsections (2) and (3) where a person has died his consent to be a donor means—

- (a) his decision to consent to the donation, or his decision not to consent to it, which was in force immediately before he died;
- (b) if-
  - (i) paragraph (a) does not apply, and
  - (ii) the person had appointed a nominated representative under section 28Y,

consent given under the appointment;

- (c) if neither paragraph (a) nor paragraph (b) applies, the consent of a person who stood in a qualifying relationship to him immediately before he died.

(2) Where it is not reasonably practicable to communicate with a nominated representative appointed under section 28Y within the time available for the donation, the nominated representative shall be treated as not being able to give consent under the appointment.

(3) Where a person has died as a child his consent to be a donor means-

- (a) his decision to consent to the donation, or his decision not to consent to it, which was in force immediately before he died;
- (b) if paragraph (a) does not apply-
  - (i) the consent of a person who had parental responsibility for him immediately before he died, or
  - (ii) where no person had parental responsibility for him immediately before he died, the consent of a person who stood in a qualifying relationship to him at that time.

**Nominated representative.**

28Y.(1) An adult may appoint one or more persons to represent him after his death in relation to consent for the purposes of donation.

(2) An appointment under this section may be made orally or in writing.

(3) An oral appointment under this section is only valid if made in the presence of at least two witnesses present at the same time.

(4) A written appointment under this section is only valid if-

- (a) it is signed by the person making it in the presence of at least one witness who attests the signature;
- (b) it is signed at the direction of the person making it, in his presence and in the presence of at least one witness who attests the signature; or
- (c) it is contained in the person's will.

(5) Where a person appoints two or more persons under this section, they shall be regarded as appointed to act jointly and severally unless the appointment provides that they are appointed to act jointly.

(6) An appointment under this section may be revoked at any time.

(7) Subsections (2) to (4) apply to the revocation of an appointment under this section as they apply to the making of such an appointment.

(8) A person appointed under this section may at any time renounce his appointment.

(9) A person may not act under an appointment under this section if-

- (a) he is not an adult; or
- (b) he lacks capacity to consent.

**Qualifying relationships for donation.**

28Z.(1) The qualifying relationships for the purpose of donation shall be ranked in the following order-

- (a) spouse, civil partner, or partner;
- (b) parent or child;
- (c) brother or sister;
- (d) grandparent or grandchild;
- (e) child of a person falling within paragraph (c);
- (f) stepfather or stepmother;
- (g) half-brother or half-sister;
- (h) friend of longstanding.

(2) Relationships in the same paragraph of subsection (1) are accorded equal ranking.

(3) Consent is obtained from the person whose relationship to the deceased person is accorded the highest ranking in accordance with subsections (1) and (2).

(4) If the relationship of each of two or more persons to the deceased person is accorded equal highest ranking in accordance with subsections (1) and (2), it is sufficient to obtain the consent of any of them.

(5) In applying the principles set out above, a person's relationship shall be left out of account if-

- (a) he does not wish to deal with the issue of donation;
- (b) he is not able to deal with the issue of donation; or

- (c) it is not reasonably practicable to communicate with him within the time available if consent in relation to donation is to be acted on.

(6) The Minister may by Regulations amend the order of qualifying relationships at subsection (1).

**Regulations.**

29.(1) The Minister may make Regulations—

- (a) prescribing fees to be paid under this Part;
- (b) giving effect to or implementing any International Convention, Protocol or Agreement or any European Union Directive or Regulation that relate to the subject-matter of this Part; or
- (c) providing for generally carrying out the purposes of this Part.

**SCHEDULE 1**

Section 13(2) (a) and 13 (7)

**SELECTION CRITERIA FOR DONORS OF TISSUES OR CELLS  
OR BOTH (EXCEPT DONORS OF REPRODUCTIVE CELLS).**

Selection criteria for donors are based on an analysis of risks related to the application of the specific cells/tissues. Indicators of these risks must be identified by physical examination, review of the medical and behavioural history, biological testing, post-mortem examination (for deceased donors) and any other appropriate investigation. Unless justified on the basis of a documented risk assessment approved by the responsible person as defined in section 2(1), donors must be excluded from donation if any of the following criteria applies:

**1. Deceased Donors.**1.1. *General criteria for exclusion*

1.1.1. Cause of death unknown, unless autopsy provides information on the cause of death after procurement and none of the general criteria for exclusion set out in the present section applies.

1.1.2. History of a disease of unknown aetiology.

1.1.3. Presence, or previous history, of malignant disease, except for primary basal cell carcinoma, carcinoma in situ of the uterine cervix, and some primary tumours of the central nervous system that have to be evaluated according to scientific evidence. Donors with malignant diseases can be evaluated and considered for cornea donation, except for those with retinoblastoma, haematological neoplasm, and malignant tumours of the anterior segment of the eye.

1.1.4. Risk of transmission of diseases caused by prions. This risk applies, for example, to—

- (a) people diagnosed with Creutzfeldt-Jakob Disease, or variant Creutzfeldt-Jakob Disease, or having a family history of non-iatrogenic Creutzfeldt-Jakob disease.
- (b) People with a history of rapid progressive dementia or degenerative neurological disease, including those of unknown origin;

- (c) Recipients of hormones derived from the human pituitary gland (such as growth hormones) and recipients of grafts of cornea, sclera and dura mater, and persons that have undergone undocumented neurosurgery (where dura mater may have been used).

For variant Creutzfeld-Jakob Disease, further precautionary measures may be recommended.

1.1.5. Systemic infection which is not controlled at the time of donation, including bacterial diseases, systemic viral, fungal or parasitic infections, or significant local infection in the tissue and cells to be donated. Donors with bacterial septicaemia may be evaluated and considered for eye donation, but only where the corneas are to be stored by organ culture to allow detection of any bacterial contamination of the tissue.

1.1.6. History, clinical evidence, or laboratory evidence of HIV, acute or chronic hepatitis B (except in the case of persons with a proven immune status) hepatitis C and HTLV I/II, transmission risk or evidence of risk factors for these infections.

1.1.7. History of chronic, systemic autoimmune disease that could have a detrimental effect on the quality of the tissue to be retrieved.

1.1.8. Indications that test results of donor blood samples will be invalid due to: (a) the occurrence of haemodilution, according to the specifications in section 2 of Schedule 2, where a pre-transfusion sample is not available; or (b) treatment with immunosuppressive agents.

1.1.9. Evidence of any other risk factors for transmissible diseases on the basis of a risk assessment, taking into consideration donor travel and exposure history and local infectious disease prevalence.

1.1.10. Presence on the donor's body of physical signs implying a risk of transmissible disease(s) as described in point 1.2.3 of Schedule 4.

1.1.11. Ingestion of, or exposure to, a substance (such as cyanide, lead, mercury, gold) that may be transmitted to recipients in a dose that could endanger their health.

1.1.12. Recent history of vaccination with a live attenuated virus where a risk of transmission is considered to exist.

1.1.13. Transplantation with xenografts.

1.2. *Additional exclusion criteria for deceased child donors.*

1.2.1. Any children born from mothers with HIV infection or that meet any of the exclusion criteria described in section 1.1 must be excluded as donors until the risk of transmission of infection can be definitely ruled out.

- (a) Children aged less than 18 months born from mothers with HIV, hepatitis B, hepatitis C or HTLV infection or at risk of such infection, and who have been breastfed by their mothers during the previous 12 months, cannot be considered as donors regardless of the results of the analytical tests;
- (b) Children of mothers with HIV, hepatitis B, hepatitis C or HTLV infection or at risk of such infection, and who have not been breastfed by their mothers during the previous 12 months and for whom analytical tests, physical examinations and reviews of medical records do not provide evidence of HIV, hepatitis B, hepatitis C or HTLV infection, can be accepted as donors.

## 2. Living Donors.

### 2.1. *Autologous Living Donor*

2.1.1. If the removed tissues and cells are to be stored or cultured, the same minimum set of biological testing requirements must apply as for an allogeneic living donor. Positive test results will not necessarily prevent the tissues or cells or any product derived from them being stored, processed and re-implanted, if appropriate isolated storage facilities are available to ensure no risk of cross-contamination with other grafts or no risk of contamination with adventitious agents or mix-ups or both.

### 2.2. *Allogeneic Living Donor*

2.2.1. Allogeneic living donors must be selected on the basis of their health and medical history, provided on a questionnaire and through an interview performed by a qualified and trained healthcare professional with the donor, in compliance with point 2.2.2. This assessment must include relevant factors that may assist in identifying and screening our persons whose donation could present a health risk to others, such as the possibility of transmitting diseases or health risks to themselves. For any donation, the collection process must not interfere with or compromise the health or care of the donor. In the case of cord blood or amniotic membrane donation, this applies to both mother and baby.

2.2.2. Selection criteria for allogeneic living donors must be established and documented by the tissue establishment (and the transplanting clinician in the case of direct distribution to the recipient) based on the specific tissue or cells to be donated, together with the donor's physical status and medical

and behavioural history and the results of clinical investigations and laboratory tests establishing the donor's state of health.

2.2.3. The same exclusion criteria must be applied as for deceased donors with the exception of point 1.1.1 Depending on the tissue or cell to be donated, other specific exclusion criteria may need to be added, such as:

- (a) pregnancy (except for donors of umbilical cord blood cells and amniotic membrane and sibling donors of haematopoietic progenitors);
- (b) breastfeeding;
- (c) in the case of haematopoietic progenitor cells, the potential for transmission of inherited conditions.



## SCHEDULE 2

Section 13(1)(a) and (b)

**LABORATORY TESTS REQUIRED FOR DONORS (EXCEPT DONORS OF REPRODUCTIVE CELLS).****1. Biological tests required for donors.**

1.1. The following biological tests must be performed for all donors as a minimum requirement;

HIV 1 and 2	Anti-HIV-1,2
Hepatitis B	HbsAg Anti HBc
Hepatitis C	Anti- HCV- Ab
Syphilis	See 1.4 (below)

1.2. HTLV-I antibody testing must be performed for donors living in, or originating from, high-prevalence areas or with sexual partners originating from those areas or where the donor's parents originate from those areas.

1.3. When anti-HBc is positive and HbsAg is negative, further investigations are necessary with a risk assessment to determine eligibility for clinical use.

1.4. A validated testing algorithm must be applied to exclude the presence of active infection with *Treponema pallidum*. A non-reactive test, specific or non-specific, can allow tissues and cells to be released. When a non-specific test is performed, a reactive result will not prevent procurement or release if a specific *Treponema* confirmatory test is non-reactive. A donor whose specimen tests reactive on a *Treponema*-specific test will require a thorough risk assessment to determine eligibility for clinical use.

1.5. In certain circumstances, additional testing may be required depending on the donor's history and the characteristics of the tissue or cells donated (e.g. RhD, HLA, malaria, CMV, toxoplasma, EBV, *Trypanosoma cruzi*).

1.6. For autologous donors, point 2.1.1. in Schedule 1 applies.

**2. General requirements to be met for determining biological markers.**

2.1. The tests must be carried out by a qualified laboratory, authorised as a testing centre by the competent authority, using CE marked testing kits where appropriate. The type of test used must be validated for the purpose in accordance with current scientific knowledge.

2.2. The biological tests will be carried out on the donor's serum or plasma; they must not be performed on other fluids or secretions such as the aqueous or vitreous humour unless specifically justified clinically using a validated test for such a fluid.

2.3. When potential donors have lost blood and have recently received donated blood, blood components, colloids or crystalloids, blood testing may not be valid due to haemodilution of the sample. An algorithm must be applied to assess the degree of haemodilution in the following circumstances—

- (a) ante-mortem blood sampling: if blood, blood components or colloids were infused in the 48 hours preceding blood sampling or if crystalloids were infused in the hour preceding blood sampling;
- (b) post-mortem blood sampling: if blood, blood components or colloids were infused in the 48 hours preceding death or if crystalloids were infused in the hour preceding death.

Tissue establishments may accept tissues and cells from donors with plasma dilution of more than 50% only if the testing procedures used are validated for such plasma or if a pre-transfusion sample is available.

2.4. In the case of a deceased donor, blood samples must have been obtained just prior to death, or if not possible, the time of sampling must be as soon as possible after death and in any case within 24 hours after death.

2.5.—

- (a) In the case of living donors (except allogeneic bone marrow stem-cell and peripheral blood stem-cell donors, for practical reasons), blood samples must be obtained at the time of donation or if not possible, within 7 days post donation (this is the 'donation sample').
- (b) Where tissues and cells of allogeneic living donors can be stored for long periods, repeat sampling and testing is required after an interval of 180 days. In these circumstances of repeat testing, the donation sample can be taken up to 30 days prior to and 7 days post donation.
- (c) Where tissues and cells of allergenic living donors cannot be stored for long periods and repeat sampling is therefore not possible, paragraph 2.5(a) above applies.

2.6. If, in a living donor (except bone marrow stem-cell and peripheral blood stem-cell donors) the 'donation sample' as defined in paragraph 2.5(a) above, is additionally tested by the nucleic acid amplification

technique (NAT) for HIV, HBV and HCV, testing of a repeat blood sample is not required. Retesting is also not required if the processing includes an inactivation step that has been validated for the viruses concerned.

2.7. In the case of bone marrow and peripheral blood stem-cell collection, blood samples must be taken for testing within 30 days prior to donation.

2.8. In the case of neonatal donors, the biological tests may be carried out on the donor's mother to avoid medically unnecessary procedures upon the infant.

## SCHEDULE 3

Section 13(1)(c) and (d) and 13(2)(b)

**SELECTION CRITERIA AND LABORATORY TESTS REQUIRED FOR DONORS OF REPRODUCTIVE CELLS****1. Partner donation for direct use.**

Donor selection criteria and laboratory testing do not need to be applied in the case of partner donation of reproductive cells for direct use.

**2. Partner donation (not direct use).**

Reproductive cells that are processed or stored or both and reproductive cells that will result in the cryopreservation of embryos must meet the following criteria—

- 2.1. The clinician responsible for the donor must determine and document, based on the patient's medical history and therapeutic indications, the justification for the donation and its safety for the recipient and any child(ren) that might result.
- 2.2. The following biological tests must be carried out to assess the risk of cross contamination—

HIV 1 and 2	Anti-HIV-1,2
Hepatitis B	HbsAg Anti HBc
Hepatitis C	Anti- HCV- Ab

In case of sperm processed for intrauterine insemination, not to be stored and if the tissue establishment can demonstrate that the risk of cross contamination and staff exposure has been addressed through the use of validated processes, the biological testing may not be required.

2.3. Where HIV 1 and 2, hepatitis B or hepatitis C test results are positive or unavailable, or where the donor is known to be a source of infection risk, a system of separate storage must be devised.

2.4. HTLV-I antibody testing must be performed for donors living in, or originating from, high-prevalence areas or with sexual partners originating from those areas or where the donor's parents originate from those areas;

2.5. In certain circumstances, additional testing may be required depending on the donor's travel and exposure history and the characteristics of the tissue or cells donated (e.g. RhD, malaria, CMV, *T cruzi*).

2.6. Positive results will not necessarily prevent partner donation in accordance with national rules.

### **3. Donations other than by partners.**

The use of reproductive cells other than for partner donation must meet the following criteria–

3.1. Donors must be selected on the basis of their age, health and medical history, provided on a questionnaire and through a personal interview performed by a qualified and trained healthcare professional. This assessment must include relevant factors that may assist in identifying and screening out persons whose donation could present a health risk to others, such as the possibility of transmitting diseases (such as sexually transmitted infections), or health risks to themselves (e.g; superovulation, sedation or the risks associated with the egg collection procedure or the psychological consequences of being a donor).

3.2. The donors must be negative for HIV 1 and 2, HCV, HBV and syphilis on a serum or plasma sample, tested in accordance with point 1.1 of Schedule 2 and sperm donors must additionally be negative for Chlamydia on a urine sample tested by the nucleic acid amplification technique (NAT).

3.3. HTLV-I antibody testing must be performed for donors living in, or originating from, high-prevalence areas or with sexual partners originating from those areas or where the donor's parents originate from those areas;

3.4. In certain circumstances, additional testing may be required depending on the donor's history and the characteristics of the tissue or cells donated (e.g. RhD, malaria, CamV, *T.cruzi*).

3.5. For autologous donors, point 2.1.1 in Schedule 1 applies.

3.6. Genetic screening for autosomal recessive genes known to be prevalent, according to international scientific evidence, in the donor's ethnic background and an assessment of the risk of transmission of inherited conditions known to be present in the family must be carried out, after consent is obtained. Complete information must be provided, in accordance with the requirements in this Act. Complete information on the associated risk and on the measures undertaken for its mitigation must be communicated and clearly explained to the recipient.

### **4. General requirements to be met for determining biological markers.**

4.1. The tests must be carried out in accordance with points 2.1 and 2.2 of Schedule 2.

4.2. For donations other than by partners, blood samples must be obtained at the time of each donation.

For donation by partners (not for direct use), blood samples must be obtained within three months before the first donation. For further partner donations by the same donor, further blood samples must be obtained according to national legislation, but no later than 24 months from the previous sampling.

4.3. Sperm donations other than by partners will be quarantined for a minimum of 180 days, after which repeat testing is required. If the blood donation sample is additionally tested by the nucleic acid amplification technique (NAT) for HIV, HBV and HCV, testing of a repeat blood sample is not required. Retesting is also not required if the processing includes an inactivation step that has been validated for the viruses concerned.

**SCHEDULE 4**

Sections 9, 10 and 14

**CELL OR TISSUE OR BOTH DONATION AND PROCUREMENT  
PROCEDURES AND RECEPTION AT THE TISSUE  
ESTABLISHMENT**

**1. Donation and procurement procedures.**

1.1. *Consent and donor identification*

1.1.1. Before the procurement of tissues and cells proceeds, an authorised person must confirm and record—

- (a) that consent for the procurement has been obtained in accordance with section 13; and
- (b) how and by whom the donor has been reliably identified.

1.1.2. In the case of living donors, the health professional responsible for obtaining the health history must ensure that the donor has—

- (a) understood the information provide,
- (b) had an opportunity to ask questions and been provided with satisfactory responses;
- (c) confirmed that all the information provided is true to the best of his/her knowledge.

1.2. *Donor evaluation (this paragraph does not apply to partner donation of reproductive cells or to autologous donors)*

1.2.1. An authorised person must collect and record the donor's relevant medical and behavioural information according to the requirements described in point 1.4

1.2.2. In order to acquire the appropriate information, different relevant sources must be used, including at least an interview with the donor, for living donors, and the following when appropriate:

- (a) the medical records of the donor;
- (b) an interview with a person who knew the donor well, for deceased donors;
- (c) an interview with the treating physician;

- (d) an interview with the general practitioner;
- (e) the autopsy report.

1.2.3. In addition, in the case of a deceased donor, and in the case of a living donor when justified, a physical examination of the body must be performed to detect any signs that may be sufficient in themselves to exclude the donor or which must be assessed in the light of the donor's medical and personal history.

1.2.4. The complete donor records must be reviewed and assessed for suitability and signed by a qualified health professional.

### *1.3. Procurement procedures for tissues and cells*

1.3.1. The procurement procedures must be appropriate for the type of donor and the type of tissue/cells donated. There must be procedures in place to protect the safety of the living donor.

1.3.2. The procurement procedures must protect those properties of the tissues/cells that are required for their ultimate clinical use, and at the same time minimise the risk of microbiological contamination during the process, particularly when tissues and cells cannot subsequently be sterilised.

1.3.3. For deceased donation, the area of access must be restricted. A local sterile field using sterile drapes must be used. Staff conducting procurement must be clothed appropriately for the type of procurement. Usually, this will extend to being scrubbed, gowned in sterile clothing and wearing sterile gloves, face shields and protective masks.

1.3.4. In the case of a deceased donor, the place of procurement must be recorded and the time interval from death to procurement must be specified so as to ensure that the required biological or physical properties of the tissues/cells are retained.

1.3.5. Once the tissues and cells have been retrieved from a deceased donor body, it must be reconstructed so that it is as similar as possible to its original anatomical appearance.

1.3.6. Any adverse event occurring during procurement that has or may have resulted in harm to a living donor and the outcome of any investigation to determine the cause must be recorded and reviewed.

1.3.7. Policies and procedures must be in place to minimise the risk of tissue or cell contamination by staff who might be infected with transmissible diseases.



1.3.8. Sterile instruments and devices must be used for tissue and cell procurement. Instruments or devices must be of good quality, validated or specifically certified and regularly maintained for the procurement of tissues and cells.

1.3.9. When reusable instruments must be used, a validated cleaning and sterilisation procedure for removal of infectious agents has to be in place.

1.3.10. Wherever possible, only CE marked medical devices must be used and all concerned staff must have received appropriate training on the use of such devices.

1.4. *Donor documentation*

1.4.1. For each donor, there must be a record containing–

- (a) the donor identification (first name, family name and date of birth – if a mother and child are involved in the donation, both the name and date of birth of the mother and the name, if known, and date of birth of the child);
- (b) age, sex, medical and behavioural history (the information collected must be sufficient to allow application of the exclusion criteria, where required);
- (c) outcome of body examination, where applicable;
- (d) haemodilution formula, where applicable;
- (e) the consent/authorisation form, where applicable;
- (f) clinical data, laboratory test results, and the results of other tests carried out;
- (g) if an autopsy was performed, the results must be included in the record (for tissues and cells that cannot be stored for extended periods, a preliminary verbal report of the autopsy must be recorded);
- (h) for haematopoietic progenitor cell donors, the donor's suitability for the chosen recipient must be documented. For unrelated donations, when the organisation responsible for procurement has limited access to recipient data, the transplanting organisation must be provided with donor data relevant for confirming suitability.

1.4.2. The organisation performing the procurement must produce a procurement report, which is passed on to the tissue establishment. This report must contain at least:

- (a) the identification, name and address of the tissue establishment to receive the cells/tissues;
- (b) donor identification data (including how and by whom the donor was identified);
- (c) description and identification of procured tissues and cells (including samples for testing);
- (d) identification of the person who is responsible for the procurement session, including signing;
- (e) date, time (where relevant, start and end) and location of procurement and procedure (SOP) used, including any incidents that occurred; where relevant, environmental conditions at the procurement facility (description of the physical area where procurement took place);
- (f) for deceased donors, conditions under which the cadaver is kept: refrigerated (or not), time of start and end of refrigeration;
- (g) ID/batch numbers of reagents and transport solutions used.

The report must also contain the date and time of death where possible.

Where sperm is procured at home, the procurement report must state this and must contain only—

- (a) the name and address of the tissue establishment to receive the cells/tissues;
- (b) the donor identification. The date and time of procurement may be included, where possible.

1.4.3. All the records must be clear and readable, protected from unauthorised amendment and retained and readily retrieved in this condition throughout their specified retention period in compliance with data protection legislation.

1.4.4. Donor records, required for full traceability must be kept for a minimum of 30 years after clinical use, or the expiry date, in an appropriate archive acceptable to the competent authority.

1.5. *Packaging*

1.5.1. Following procurement, all recovered tissues and cells must be packaged in a manner which minimises the risk of contamination and must be stored at temperature that preserve the required characteristics and biological function of the cells/tissues. The packaging must also prevent contamination of those responsible for packaging and transportation of the tissues or cells.

1.5.2. The packaged cells/tissues must be shipped in a container which is suitable for the transport of biological materials and which maintains the safety and quality of the contained tissue or cells.

1.5.3. Any accompanying tissue or blood samples for testing must be accurately labelled to ensure identification with the donor, and must include a record of the time and place the specimen was taken.

1.6. *Labelling of the procured tissues or cells or both*

At the time of procurement, every package containing tissues and cells must be labelled. The primary tissue/cell container must indicate the donation identification or code and the type of tissues and cells. Where the size of the package permits, the following information must also be provided—

- (a) date (and time where possible) of donation;
- (b) hazard warnings;
- (c) nature of any additives (if used);
- (d) in the case of autologous donations, the label must state ‘for autologous use only’;
- (e) in the case of directed donations, the label must identify the intended recipient.

If any of the information under points (a) to (e) above cannot be included on the primary package label, it must be provided on a separate sheet accompanying the primary package.

1.7. *Labelling of the shipping container*

When tissues/cells are shipped by an intermediary, every shipping container must be labelled at least with—

- (a) TISSUES AND CELLS and HANDLE WITH CARE;

- (b) The identification of the establishment from which the package is being transported (address and phone number) and the contact person in the event of problems;
- (c) the identification of the tissue establishment of destination (address and phone number) and the person to be contacted to take delivery of the container;
- (d) the date and time of the start of transportation;
- (e) specifications concerning conditions of transport relevant to the quality and safety of the tissues and cells;
- (f) in the case of all cellular products, the following indication: DO NOT IRRADIATE;
- (g) when a product is known to be positive for relevant infectious disease marker, the following indication: BIOLOGICAL HAZARD;
- (h) in the case of autologous donors, the following indication: FOR AUTOLOGOUS USE ONLY.
- (i) specifications concerning storage conditions (such as DO NOT FREEZE).

2. Receipt of the tissue/cells at the tissue establishment.

2.1. When the retrieved tissues/cells arrive at the tissue establishment, there must be documented verification that the consignment, including the transport conditions, packaging, labelling and associated documentation and samples, meet the requirements of this Schedule and the specifications of the receiving establishment.

2.2. Each establishment must ensure that the tissue and cells received are quarantined until they, along with the associated documentation, have been inspected or otherwise verified as conforming to requirements. The review of relevant donor/procurement information and thus acceptance of the donation needs to be carried out by specified/authorised persons.

2.3. Each tissue establishment must have a documented policy and specifications against which each consignment of tissues and cells, including samples, are verified. These must include the technical requirements and other criteria considered by the tissue establishment to be essential for the maintenance of acceptable quality. The tissue establishment must have documented procedures for the management and segregation of non-conforming consignments, or those with incomplete test results, to

ensure that there is no risk of contamination of other tissues and cells being processed, preserved or stored.

2.4. The data that must be registered at the tissue establishment (except for donors of reproductive cells intended for partner donation) include–

- (a) consent/authorisation; including the purpose(s) for which the tissues and cells may be used (i.e. therapeutic or research, or both therapeutic use and research) and any specific instructions for disposal if the tissue or cells are not used for the purpose for which consent was obtained;
- (b) all required records relating to the procurement and the taking of the donor history, as described in the donor documentation section;
- (c) results of physical examination, of laboratory tests and of other tests (such as the autopsy report, if used in accordance with point 1.2.2.);
- (d) for allogeneic donors, a properly documented review of the complete donor evaluation against the selection criteria by an authorised and trained person;
- (e) in the case of cell cultures intended for autologous use, documentation of the possibility of medicinal allergies (such as to antibiotics) of the recipient.

2.5. In the case of reproductive cells intended for partner donation, the data to be registered at the tissue establishment include–

- (a) consent; including the purpose(s) for which the tissues and cells may be used (such as reproductive only or for research or both) and any specific instructions for disposal if the tissue or cells are not used for the purpose for which consent was obtained;
- (b) donor identification and characteristics: type of donor, age, sex and presence of risk factors and, in the case of a deceased donor, the cause of death;
- (c) partner identification;
- (d) place of procurement;
- (e) tissues and cells obtained and relevant characteristics.

## SCHEDULE 5

Section 5(2)

**Requirements for authorisation of tissue establishments****A. ORGANISATION AND MANAGEMENT**

1. A responsible person must be appointed having qualifications and responsibilities as provided in section 8 of this Part.
2. A tissue establishment must have an organisational structure and operational procedures appropriate to the activities for which authorisation is sought; there must be an organisational chart which clearly defines accountability and reporting relationships.
3. Every tissue establishment must have access to a nominated medical registered practitioner to advise on and oversee the establishment's medical activities such as donor selection, review of clinical outcomes of applied tissues and cells or interaction as appropriate with clinical users.
4. There must be a documented quality management system applied to the activities for which authorisation is sought, in accordance with the standards laid down in this Part
5. It must be ensured that the risks inherent in the use and handling of biological material are identified and minimised, consistent with maintaining adequate quality and safety for the intended purpose of the tissues and cells. The risks include those relating in particular to the procedures, environment, and staff health status specific to the tissue establishment.
6. Agreements between tissue establishments and third parties must comply with section 18 of this Part. Third party agreements must specify the terms of the relationship and responsibilities as well as the protocols to be followed to meet the required performance specification.
7. There must be a documented system in place, supervised by the responsible person, for ratifying that tissues or cells or both meet appropriate specifications for safety and quality for release and for their distribution.
8. In the event of termination of activities the agreements concluded and the procedures adopted in accordance with section 14(9) of this Part shall include traceability data and material concerning the quality and safety of tissues and cells.

9. There must be a documented system in place that ensures the identification of every unit of tissue or cells at all stages of the activities for which authorisation is sought.

**B. PERSONNEL**

1. The personnel in tissue establishments must be available in sufficient number and be qualified for the tasks they perform. The competency of the personnel must be evaluated at appropriate intervals specified in the quality system.

2. All personnel should have clear, documented and up-to-date job descriptions. Their tasks, responsibilities and accountability must be clearly documented and understood.

3. Personnel must be provided with initial or basic training, updated training as required when procedures change or scientific knowledge develops and adequate opportunities for relevant professional development. The training programme must ensure and document that each individual—

- (a) has demonstrated competence in the performance of their designated tasks;
- (b) has an adequate knowledge and understanding of the scientific or technical processes and principles relevant to their designated tasks;
- (c) understands the organisational framework, quality system and health and safety rules of the establishment in which they work; and
- (d) is adequately informed of the broader ethical, legal and regulatory context of their work.

**C. EQUIPMENT AND MATERIALS**

1. All equipment and material must be designed and maintained to suit its intended purpose and must minimise any hazard to recipients or staff or to both.

2. All critical equipment and technical devices must be identified and validated, regularly inspected and preventively maintained in accordance with the manufacturers' instructions. Where equipment or materials affect critical processing or storage parameters (e.g. temperature, pressure, particle counts, microbial contamination levels), they must be identified and must be the subject of appropriate monitoring, alerts, alarms and corrective action, as required, to detect malfunctions and defects and to ensure that the critical parameters are maintained within acceptable limits at all times. All

equipment with a critical measuring function must be calibrated against a traceable standard if available.

3. New and repaired equipment must be tested when installed and must be validated before use. Test results must be documented.
4. Maintenance, servicing, cleaning, disinfection and sanitation of all critical equipment must be performed regularly and recorded accordingly.
5. Procedures for the operation of each piece of critical equipment, detailing the action to be taken in the event of malfunctions or failure, must be available.
6. The procedures for the activities for which authorisation is sought, must detail the specifications for all critical materials and reagents. In particular, specifications for additives (e.g. solutions) and packaging materials must be defined. Critical reagents and materials must meet documented requirements and specifications.

#### **D. FACILITIES OR PREMISES**

1. A tissue establishment must have suitable facilities to carry out the activities for which authorisation is sought, in accordance with the standards laid down in this Part.
2. When these activities include processing of tissues and cells while exposed to the environment, this must take place in an environment with specified air quality and cleanliness in order to minimise the risk of contamination, including cross-contamination between donations. The effectiveness of these measures must be validated and monitored.
3. Unless otherwise specified in point 4, where tissues and cells are exposed to the environment during processing, without a subsequent microbial inactivation process, an air quality with particle counts and microbial colony counts equivalent to those of Grade A as defined in the current European Guide to Good Manufacturing Practice (GMP), Annex 1 and Directive 2003/94/EC is required with a background environment appropriate for the processing of the tissue/cell concerned but at least equivalent to GMP Grade D in terms of particles and microbial counts.
4. A less stringent environment than specified in point 3 may be acceptable where—
  - (a) a validated microbial inactivation or validated terminal sterilisation process is applied;



- (b) or, where it is demonstrated that exposure in a Grade A environment has a detrimental effect on the required properties of the tissue or cell concerned;
- (c) or, where it is demonstrated that the mode and route of application of the tissue or cell to the recipient implies a significantly lower risk of transmitting bacterial or fungal infection to the recipient than with cell and tissue transplantation;
- (d) or, where it is not technically possible to carry out the required process in a Grade A environment (for example, due to requirements for specific equipment in the processing area that is not fully compatible with Grade A).

5. In point 4(a), (b), (c) and (d), an environment must be specified. It must be demonstrated and documented that the chosen environment achieves the quality and safety required, at least taking into account the intended purpose, mode of application and immune status of the recipient. Appropriate garments and equipment for personal protection and hygiene must be provided in each relevant department of the tissue establishment along with written hygiene and gowning instructions.

6. When the activities for which authorisation is sought involve storage of tissues and cells, the storage conditions necessary to maintain the required tissue and cell properties, including relevant parameters such as temperature, humidity or air quality must be defined.

7. Critical parameters (e.g. temperature, humidity, air quality) must be controlled, monitored, and recorded to demonstrate compliance with the specified storage conditions.

8. Storage facilities must be provided that clearly separate and distinguish tissues and cells prior to release in quarantine from those that are released and from those that are rejected, in order to prevent mix-up and cross-contamination between them. Physically separate areas or storage devices or secured segregation within the device must be allocated in both quarantine and released storage locations for holding certain tissue and cells collected in compliance with special criteria.

9. The tissue establishment must have written policies and procedures for controlled access, cleaning and maintenance, waste disposal and for the re-provision of services in an emergency situation.

#### **E. DOCUMENTATION AND RECORDS**

1. There must be a system in place that results in clearly defined and effective documentation, correct records and registers and authorised

Standard Operating Procedures (SOPs), for the activities for which authorisation is sought. Documents must be regularly reviewed and must conform to the standards laid down in this Part. The system must ensure that work performed is standardised, and that all steps are traceable; i.e. coding, donor eligibility, procurement, processing, preservation, storage, transport, distribution or disposal, including aspects relating to quality control and quality assurance.

2. For every critical activity, the materials, equipment and personnel involved must be identified and documented.
3. In the tissue establishments all changes to documents must be reviewed, dated, approved, documented and implemented promptly by authorised personnel.
4. A document control procedure must be established to provide for the history of document reviews and changes and to ensure that only current versions of documents are in use.
5. Records must be shown to be reliable and a true representation of the results.
6. Records must be legible and indelible and may be handwritten or transferred to another validated system, such as a computer or microfilm.
7. Without prejudice to section 16(8) of this Part, all records, including raw data, which are critical to the safety and quality of the tissues and cells shall be kept so as to ensure access to these data for at least 10 years after expiry date, clinical use or disposal.
8. Records must meet the confidentiality requirements laid down in section 20. Access to registers and data must be restricted to persons authorised by the responsible person, and to the competent authority for the purpose of inspection and control measures.

#### **F. QUALITY REVIEW**

1. An audit system must be in place for the activities for which authorisation is sought. Trained and competent persons must conduct the audit in an independent way, at least every two years, in order to verify compliance with the approved protocols and the regulatory requirements. Findings and corrective actions must be documented.
2. Deviations from the required standards of quality and safety must lead to documented investigations, which include a decision on possible corrective and preventive actions. The fate of non-conforming tissues and cells must be decided in accordance with written procedures supervised by

the responsible person and recorded. All affected tissues and cells must be identified and accounted for.

3. Corrective actions must be documented, initiated and completed in a timely and effective manner. Preventive and corrective actions should be assessed for effectiveness after implementation.

4. The tissue establishment should have processes in place for review of the performance of the quality management system to ensure continuous and systematic improvement.

**SCHEDULE 6**

Section 9(1)(c)

**Requirements for the authorisation of tissue and cell preparation processes at the tissue establishments**

The competent authority shall authorise each tissue and cell preparation process after evaluation of the donor selection criteria and procurement procedures, the protocols for each step of the process, the quality management criteria, and the final quantitative and qualitative criteria for tissues and cells. This evaluation must comply at least with the requirements set out in this Schedule.

**A. RECEPTION AT THE TISSUE ESTABLISHMENT**

Upon reception of procured tissues and cells at the tissue establishment, the tissues and cells must comply with the requirements defined in this Part.

**B. PROCESSING**

When the activities for which the authorisation is sought include processing of tissues and cells, the tissue establishment procedures must comply with the following criteria—

1. The critical processing procedures must be validated and must not render the tissues or cells clinically ineffective or harmful to the recipient. This validation may be based on studies performed by the establishment itself, or on data from published studies or, for well-established processing procedures, by retrospective evaluation of the clinical results for tissues supplied by the establishment.
2. It has to be demonstrated that the validated process can be carried out consistently and effectively in the tissue establishment environment by the staff.
3. The procedures must be documented in SOPs which must conform to the validated method and to the standards laid down in this Part accordingly with Schedule 1 (E), points 1 to 4.
4. It must be ensured that all processes are conducted in accordance with the approved SOPs.
5. Where a microbial inactivation procedure is applied to the tissue or cells it must be specified, documented, and validated.

6. Before implementing any significant change in processing, the modified process must be validated and documented.
7. The processing procedures must undergo regular critical evaluation to ensure that they continue to achieve the intended results.
8. Procedures for discarding tissues and cells must prevent the contamination of other donations and products, the processing environment or personnel. These procedures must comply with national regulations.

**C. STORAGE AND RELEASE OF PRODUCTS**

When the activities for which the authorisation is sought include storage and release of tissues and cells, the authorised tissue establishment procedures must comply with the following criteria—

1. Maximum storage time must be specified for each type of storage condition. The selected period must reflect among others possible deterioration of the required tissue and cell properties.
2. There must be a system of inventory hold for tissues and cells to ensure that they cannot be released until all requirements laid down in this Part have been satisfied. There must be a standard operating procedure that details the circumstances, responsibilities and procedures for the release of tissues and cells for distribution.
3. A system for identification of tissues and cells throughout any phase of processing in the tissue establishment must clearly distinguish released from non-released (quarantined) and discarded products.
4. Records must demonstrate that before tissues and cells are released all appropriate specifications are met, in particular all current declaration forms, relevant medical records, processing records and test results have been verified according to a written procedure by a person authorised for this task by the responsible person as specified in section 8 of this Part. If a computer is used to release results from the laboratory, an audit trail should indicate who was responsible for their release.
5. A documented risk assessment approved by the responsible person as defined in section 8 of this Part must be undertaken to determine the fate of all stored tissues and cells following the introduction of any new donor selection or testing criterion

or any significantly modified processing step that enhances safety or quality.

#### D. DISTRIBUTION AND RECALL

When the activities for which the authorisation is sought include distribution of tissues and cells, the authorised tissue establishment procedures must comply with the following criteria—

1. Critical transport conditions, such as temperature and time limit must be defined to maintain the required tissue and cell properties.
2. The container and the package must be secure and ensure that the tissue and tissues and cells are maintained in the specified conditions. All containers and packages need to be validated as fit for purpose.
3. Where a contracted third party carries out distribution, a documented agreement must be in place to ensure that the required conditions are maintained.
4. There must be personnel authorised within the tissue establishment to assess the need for recall and to initiate and coordinate the necessary actions.
5. An effective recall procedure must be in place, including a description of the responsibilities and actions to be taken. This must include notification to the competent authority.
6. Actions must be taken within pre-defined periods of time and must include tracing all relevant tissues and cells and, where applicable, must include trace-back. The purpose of the investigation is to identify any donor who might have contributed to causing the reaction in the recipient and to retrieve available tissues and cells from that donor, as well as to notify consignees and recipients of tissues and cells procured from the same donor in the event that they might have been put at risk.
7. Procedures must be in place for the handling of requests for tissues and cells. The rules for allocation of tissues and cells to certain patients or health care institutions must be documented and made available to these parties upon request.
8. A documented system must be in place for the handling of returned products including criteria for their acceptance into the inventory, if applicable.

**E. FINAL LABELLING FOR DISTRIBUTION**

The primary tissue or cell container must provide–

- (a) type of tissues and cells, identification number or code of the tissue or cells, and lot or batch number where applicable;
- (b) identification of the tissue establishment;
- (c) expiry date;
- (d) in the case of autologous donation, this has to be specified (for autologous use only) and the donor/recipient has to be identified;
- (e) in the case of directed donations - the label must identify the intended recipient;
- (f) when tissues and cells are known to be positive for a relevant infectious disease marker, it must be marked as **BIOLOGICAL HAZARD**;
- (g) Single European Code as applicable to the tissues and cells being distributed for human application or the donation identification sequence as applicable to the tissues and cells released for circulation, other than distributed for human application.

If any of the information under points (d), (e) and (g) above cannot be included on the primary container label, it must be provided on a separate sheet accompanying the primary container. This sheet must be packaged with the primary container in a manner that ensures that they remain together.

2. The following information must be provided either on the label or in accompanying documentation–

- (a) description (definition) and, if relevant, dimensions of the tissue or cell product;
- (b) morphology and functional data where relevant;
- (c) date of distribution of the tissue or cells;
- (d) biological determinations carried out on the donor and results;
- (e) storage recommendations;

- (f) instructions for opening the container, package, and any required manipulation or reconstitution;
- (g) expiry dates after opening or manipulation;
- (h) instructions for reporting serious adverse reactions or events or both as set out in sections 11 and 12 of this Part;
- (i) presence of potential harmful residues (e.g. antibiotics, ethylene oxide etc);
- (j) for imported tissues and cells, the country of procurement and the exporting country (if different from the procurement country).

**F. EXTERNAL LABELLING OF THE SHIPPING CONTAINER**

For transport, the primary container must be placed in a shipping container that must be labelled with at least the following information–

- (a) identification of the originating tissue establishment, including an address and phone number;
- (b) identification of the organisation responsible for human application of destination, including address and phone number;
- (c) a statement that the package contains human tissues or cells and **HANDLE WITH CARE**;
- (d) where living cells are required for the function of the graft, such as stem cells gametes and embryos, the following must be added: **‘DO NOT IRRADIATE’**;
- (e) recommended transport conditions (e.g. keep cool, in upright position, etc.);
- (f) safety instructions or method of cooling (when applicable).



## SCHEDULE 7

Section 11(3)

## NOTIFICATION OF SERIOUS ADVERSE REACTIONS

## PART A

## Rapid notification for suspected serious adverse reactions

Tissue establishment
EU tissue establishment code (if applicable)
Report identification
Reporting date (year/month/day)
Individual affected (recipient or donor)
Date and place of procurement or human application (year/month/day)
Unique donation identification number
Date of suspected serious adverse reaction (year/month/day)
Type of tissues and cells involved in the suspected serious adverse reaction
Single European Code of tissues or cells involved in the suspected serious adverse reaction (if applicable)
Type of suspected serious adverse reaction(s)

## PART B

## Conclusions of Serious Adverse Reactions Investigation

Tissue establishment
EU tissue establishment code (if applicable)
Report identification
Confirmation date (year/month/day)

Date of serious adverse reaction (year/month/day)
Unique donation identification number
Confirmation of serious adverse reaction (Yes/No)
Single European Code of tissues or cells involved in the confirmed serious adverse reaction (if applicable)
Change of type of serious adverse reaction (Yes/No) If YES, specify
Clinical outcome (if known)  — Complete recovery — Minor sequelae — Serious sequelae — Death
Outcome of the investigation and final conclusions
Recommendations for preventive and corrective actions

## SCHEDULE 8

Section 12(4)

## NOTIFICATION OF SERIOUS ADVERSE EVENTS

## PART A

## Rapid notification for suspected serious adverse events

Tissue establishment				
EU tissue establishment code (if applicable)				
Report identification				
Reporting date (year/month/day)				
Date of serious adverse event (year/month/day)				
Serious adverse event, which may affect quality and safety of tissues and cells due to a deviation in:	Specification			
	Tissues and cells defect	Equipment failure	Human error	Other (specify)
Procurement				
Testing				
Transport				
Processing				
Storage				
Distribution				
Materials				
Others ( <i>specify</i> )				

**PART B****Conclusions of Serious Adverse Events investigation**

Tissue establishment
EU tissue establishment code (if applicable)
Report identification
Confirmation date (year/month/day)
Date of serious adverse event (year/month/day)
Root cause analysis (details)
Corrective measures taken (details)

**SCHEDULE 9**

Section 28(3)

**ANNUAL NOTIFICATION FORMAT**

**PART A**

**Annual notification format for serious adverse reactions**

Reporting country			
Reporting date 1 January-31 December ( <i>year</i> )			
Number of serious adverse reaction(s) per type of tissue and cell (or product in contact with the tissues and cells)			
	Type of tissue/cell (or product in contact with the tissues and cells)	Number of serious adverse reaction(s)	Total number of tissues/cells of this type distributed (if available)
1			
2			
3			
4			
...			
Total			
Total number of tissues and cells distributed (including type of tissue and cell for which no serious adverse reactions were reported):			
Number of recipients affected (total number of recipients):			
Number of serious adverse reactions reported		Total number of serious adverse reaction(s)	
Transmitted bacterial infection			
Transmitted viral Infection	HBV		
	HCV		
	HIV-1/2		
	Other ( <i>Specify</i> )		

Transmitted parasitological	Malaria	
	Other (Specify)	
Transmitted malignant diseases		
Other disease transmissions		
Other serious reactions (Specify)		

**PART B****Annual notification format for serious adverse events**

Reporting country				
Reporting date 1 January-31 December (year)				
Total number of tissues and cells processed				
Total number of serious adverse events, which may have affected quality and safety of tissues and cells due to a deviation in:	Specification			
	Tissues and cells defect (specify)	Equipment failure (Specify)	Human error	Other (specify)
Procurement				
Testing				
Processing				
Storage				
Distribution				
Materials				
Others (specify)				

**SCHEDULE 10**

Section 16(8)

**Minimum data to be kept in accordance with Article 9(2)**

**A. BY TISSUE ESTABLISHMENTS**

(1) Donor identification

(2) Donation identification that will include at least:

-Identification of the procurement organisation (including contact details) or the tissue establishment

-Unique donation number

-Date of procurement

-Place of procurement

-Type of donation (e.g. single v multi-tissue; autologous v allogenic; living v deceased)

(3) Product identification that will include at least:

-Identification of the tissue establishment

-Type of tissue and cell/product (basic nomenclature)

-Pool number (in case of pooling)

-Split number (if applicable)

-Expiry date (if applicable)

-Tissue/cell status (i.e. quarantined, suitable for use, etc.)

-Description and origin of the products, processing steps applied, materials and additives coming into contact with tissues and cells and having an effect on their quality and/or safety

-Identification of the facility issuing the final label

(4) Single European Code (if applicable)

(5) Human application identification that will include at least:

-Date of distribution/disposal

-Identification of the clinician or end-user/facility

**B. BY ORGANISATIONS RESPONSIBLE FOR HUMAN APPLICATION**

- (1) Identification of the supplier tissue establishment
- (2) Identification of the clinician or end-user/facility
- (3) Type of tissues and cells
- (4) Product identification
- (5) Identification of the recipient
- (6) Date of application
- (7) Single European Code (if applicable)".



**SCHEDULE 11**

Section 16A(4)

**THE STRUCTURE OF THE SINGLE EUROPEAN CODE**

DONATION SEQUENCE		IDENTIFICATION	PRODUCT IDENTIFICATION SEQUENCE			
EU TISSUE ESTABLISHMENT CODE		UNIQUE DONATION NUMBER	PRODUCT CODE		SPLIT NUMBER	EXPIRY DATE (YYYYMMDD)
ISO country code	Tissue establishment number		Product Coding System identifier	Product number		
2 alphabetic characters	6 alpha-numeric characters	13 alpha-numeric characters	1 alphabetic character	7 alpha-numeric characters	3 alpha-numeric characters	8 numeric characters

**Schedule 11A****Data to be recorded in the EU Tissue Establishment Compendium****A. Tissue establishment information**

1. Name of the tissue establishment
2. National or international code of tissue establishment
3. Name of the organisation in which the tissue establishment is located (if applicable)
4. Address of the tissue establishment
5. Publishable contact details: functional e-mail address, phone and fax

**B. Details on the authorisation, accreditation, designation, or license of the tissue establishment**

1. Name of the authorising, accrediting, designating or licensing competent authority or authorities
2. Name of the national competent authority or authorities responsible for maintenance of the EU Tissue Establishment Compendium
3. Name of the authorisation, accreditation, designation or licence holder (if applicable)
4. Tissues and cells for which the authorisation, accreditation, designation or license was granted
5. Activities actually carried out for which the authorisation, accreditation, designation or licence was granted
6. Status of the authorisation, accreditation, designation or license (authorised, suspended, revoked, in part or in full, voluntary cessation of activities)
7. Details of any conditions and exemptions added to the authorisation (if applicable)

**SCHEDULE 12**

Sections 28E and 28M

**ORGAN AND DONOR CHARACTERISATION  
PART A**

**Minimum data set**

Minimum data – information for the characterisation of organs and donors which has to be collected for each donation in accordance with the second subparagraph of Article 7(1) of the Organ Directive and without prejudice to Article 7(2) of the Organ Directive.

**Minimum data set**

The establishment where the procurement takes place and other general data

Type of donor

Blood group

Gender

Cause of death

Date of death

Date of birth or estimated age

Weight

Height

Past or present history of IV drug abuse

Past or present history of malignant neoplasia

Present history of other transmissible disease

HIV; HCV; HBV tests

Basic information to evaluate the function of the donated organ

**PART B**

**Complementary data set**

Complementary data – information for the characterisation of organs and donors to be collected in addition to minimum data specified in Part A, based on the decision of the medical team, taking into account the availability of such information and the particular circumstances of the case, in accordance with the second subparagraph of Article 7(1) of the Organ Directive .

**Complementary data set*****General data***

Contact details of the procurement organisation/the establishment where the procurement takes place necessary for coordination, allocation and traceability of the organs from donors to recipients and vice versa.

***Donor data***

Demographic and anthropometrical data required in order to guarantee an appropriate matching between the donor/organ and the recipient.

**Donor medical history**

Medical history of the donor, in particular the conditions which might affect the suitability of the organs for transplantation and imply the risk of disease transmission.

**Physical and clinical data**

Data from clinical examination which are necessary for the evaluation of the physiological maintenance of the potential donor as well as any finding revealing conditions which remained undetected during the examination of the donor's medical history and which might affect the suitability of organs for transplantation or might imply the risk of disease transmission.

**Laboratory parameters**

Data needed for the assessment of the functional characterisation of the organs and for the detection of potentially transmissible diseases and of possible contraindications with respect to organ donation.

**Image tests**

Image explorations necessary for the assessment of the anatomical status of the organs for transplantation.

**Therapy**

Treatments administered to the donor and relevant for the assessment of the functional status of the organs and the suitability for organ donation, in particular the use of antibiotics, inotropic support or transfusion therapy.