Executive Note

The Human Tissue (Specification of Posts) (Scotland) Order 2006 SSI/2006/309

The above instrument is being made in exercise of the powers conferred by section 41(2)(b) of the Human Tissue (Scotland) Act 2006 ("the 2006 Act"). The instrument is subject to negative resolution procedure.

Policy Objective

One of the problems with past post-mortem examination practice has been a lack of clarity about the basis on which organs or tissue retained from such an examination are being held. The examination is needed to fulfil the procurator fiscal's purposes, but the decisions about the material which needs to be retained depends on the professional judgement of the pathologist carrying out the examination under contract to the procurator fiscal. In some cases, the fiscal has not been clear about what has been retained, in others the pathologist has not been informed when the fiscal's investigations are complete.

The system of notification set out in Part 3 of the 2006 Act is intended to resolve these problems. Section 38(2) of the 2006 Act provides that a tissue sample will become, and fall to be retained as, part of the medical records of a deceased person where the manager of an establishment where a post-mortem examination was carried out on the instructions of the procurator fiscal, has been notified by the procurator fiscal that the tissue sample retained from that examination are no longer required for the fiscal's purposes. Section 40(2)(a) of the 2006 Act makes similar provision in relation to organs removed from the body of a deceased person during a post-mortem examination carried out on the instructions of the procurator fiscal.

Implementation will require pathologists to keep a careful note of the material they retain, and to inform the procurator fiscal of what has been retained (which in turn will help the fiscal to inform the family). The fiscal then needs to let the pathologist know the point at which the material is no longer required for the fiscal's purposes. The notification which the manager of a relevant establishment receives is the trigger (under section 38 of the 2006 Act for tissues, and under section 40(2)(a) in respect of organs) for the provisions of Part 3 of the 2006 Act to come into operation.

At present, forensic pathology is undertaken under contract to the Crown Office & Procurator Fiscal Service (COPFS) either by pathologists employed within the NHS or by a university. The terms of this Order reflect these arrangements, but also are wide enough to take account of the outcome of the current tendering process which COPFS has undertaken.

Financial Effects

The order itself has no financial effects on the Scottish Executive or any other organisation.

Regulatory Impact Assessment

The draft Order has no impact on businesses, charities or voluntary bodies.

Health Department: Patients & Quality Division
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