Department of Health

Government response to the consultation on the coding and import regulations for human tissue and cells.

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Chapter 1: Introduction

On 10 March 2017, the Department of Health on behalf of all four UK health administrations published a four week consultation on draft Human Tissue (Quality and Safety for Human Application) (Amendment) Regulations 2017; new regulations on the coding and import of tissues and cells intended for human application and the Human Fertilisation and Embryology (Quality and Safety) Regulations 2017 (now titled The Human Fertilisation and Embryology (Amendment) Regulations 2017); new regulations on the coding and import of sperm, eggs and embryos (reproductive cells) that transpose Directives EU/2015/565[1] and EU/2015/566[2]. The two consultation documents asked for views on a range of questions around the implementation of the coding and import Directives. Importantly, the Government wanted to test assumptions of the likely cost of implementing both Directives for centres licensed by the Human Tissue Authority (HTA) and the Human Fertilisation and Embryology Authority (HFEA).

In July 2007, the UK transposed European Directive 2004/23/EC (referred to as the "mother Directive") into UK law. The mother Directive sets quality and safety standards for human tissue and cells intended for human application. It has been instrumental in raising operating standards in the UK and across Europe, towards the aim of ensuring that, regardless of where human tissue and cells are procured or used within EU/EEA Member States, they meet the same high quality and safety standards.

A key requirement of the mother Directive, in relation to its safety objective, is that all tissue and cells must be traceable: from the original donor, through all processing and handling stages, to final use in the treatment of the recipient and back again. Such information is important not only for identification purposes but, where a patient suffers a serious adverse reaction, donors and other recipients can be traced quickly to minimise the risk of further harm.

The mother Directive mentions a single European coding system, the Single European Code (SEC), as the key mechanism for achieving full traceability. However, it does not set out the details of how it should work in practice.

The use of identification/traceability codes is widespread in the EU within human tissue donation, although coding is infrequently used in the reproductive sector. Where codes are used, a variety of systems currently exist: from internationally recognised systems such as ISBT 128, to nationally applied systems, such as Eurocode and individual tissue establishments' own coding systems. The lack of a centrally co-ordinated coding framework means that the value of the coding can be limited if the tissue or cells move to an establishment unfamiliar with the coding system that the supplying establishment uses.

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[1] Commission Directive (EU) 2015/565 of 8 April 2015 amending Directive 2006/86/EC as regards certain technical requirements for the coding of human tissues and cells.

[2] Commission Directive (EU) 2015/566 of 8 April 2015 implementing Directive 2004/23/EC as regards the procedures for verifying the equivalent standards of quality and safety of imported tissues and cells.

Although the UK has not experienced any major incidents involving problems with identification or traceability in the past, tissue and cells now regularly move between tissue establishments and across international borders, making the need for an internationally recognisable identification code more important in order to mitigate future patient safety risks.

To ensure that all tissue and cells intended for human application within the EU/EEA meets the same high quality and safety standards, the Import Directive establishes procedures to verify the quality and safety of tissue and cells imported from countries outside the EU/EEA (known as third countries).

On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

Chapter 2: Consultation process

The consultation document was part of a wider consultation process and we consulted with stakeholders in a number of ways. For example we worked with our stakeholder groups who encouraged their colleagues and license holders to respond. The HTA held a workshop and two webinars on the regulations, the HFEA consulted its licensed centres' panel and a DH Analyst had telephone consultations to inform the impact assessments.

As licensed establishments had already been contacted with regard to the implementation of the requirements set out in the Directives, a four-week consultation was appropriate. This was directed at a discrete group of interested stakeholders and ran from 10 March to 7 April 2017.

The consultation asked a number of specific questions on the regulatory proposals presented, and sought comments on the proposed draft regulations, the consultation-stage impact assessments and views on any other aspect of the consultation. Further details can be found at:

https://www.gov.uk/government/consultations/coding-and-import-regulations-for-human-tissues-and-cells

The consultation also invited comments on the draft guidance document prepared by the HTA to clarify requirements set out in the Directives and the amended regulations. Comments on the guidance will be used by the HTA to update and finalise the guidance, which will be published on the HTA website.

A list of respondents is available at Annex A. Respondents who indicated that they wanted their response to remain anonymous are not included in this list.

This document, prepared by the Department of Health on behalf of all four UK health administrations, summarises the responses to the consultation and other stakeholder engagement activities. This information has been used to make minor amendments to the regulations and to update and finalise the impact assessments, so that they can reflect the cost of implementation of the two Directives more accurately. The finalised regulations will be published along with the final impact assessments and Explanatory Memorandum.

Chapter 3: Summary of responses

This report provides an overview of the responses received to the consultation.

The Department of Health wishes to thank all respondents for taking the time to contribute to this consultation and for engaging with the transposition process more broadly. We also wish to thank the HTA and HFEA for their role in the consultation process and for facilitating contact with a range of stakeholders.

We received 15 responses to the consultation, six of which were submitted via e-mail and nine submitted online through the Citizen Space service. Twelve of the responses related to proposed amendments to the Human Tissue (Quality and Safety for Human Application) (Amendment) Regulations 2017 and three responses related to proposed amendments to the Human Fertilisation and Embryology (Amendment) Regulations 2017.

Of the responses:

11 were from health and other organisations

2 from regulatory services professionals

2 from businesses

Overview of consultation responses

The responses made some useful suggestions in relation to a number of operational issues, including the practical implementation of exemptions and the clarification of the type of changes that should be considered as substantial.

A number of respondents expressed the concern that as traceability systems and import licensing requirements are already in place for UK establishments, the requirements of the new Directives will provide limited additional benefit to the quality and safety of tissue and cells.

The responses also provided useful additional information for the assessment of the impact of implementation of the requirements of the new Directives.

In this section we have summarised the responses to each of the consultation questions. Not all respondents answered every question, whilst others commented more broadly on the overall content of the consultant document.

Consultation questions relating to the Human Tissue (Quality and Safety for Human Application) Amendment Regulations 2017

Consultation questions relating to coding

Question 1: Based on your current activities, to how many tissue and cells products per year do you envisage applying the SEC?

Responses ranged from zero to 10,000 tissue and cells products having the SEC applied per year, with the majority of respondents expecting to apply the SEC to less than 1,000 products per year. Some respondents stated that they anticipate only handling products that already have the SEC applied by another establishment, and some expected to be able to use the same centre exemption for products that will be donated and used within the establishment, meaning that they will not need to apply the SEC.

Question 2: Which coding system(s) are you planning to use at your establishment (ISBT 128, Eurocode or EUTC)?

The majority of respondents advised that they will be using ISBT 128 to comply with the coding requirements, with only one respondent planning to use the EUTC platform.

Question 3: How will the application of the SEC be managed at your establishment when two or more retrieval teams from different tissues establishments procure from the same donor? How will traceability be managed and what communication arrangements are in place?

This question was not applicable to the majority of respondents as they do not undertake relevant activity. One respondent stated that the current traceability system will continue to be used to manage these donations, with each establishment involved applying the SEC as relevant for the products retrieved by that establishment. The accompanying documentation will include information on all the tissues retrieved from that donor, by all establishments involved, to ensure that all parties are notified in the event of an adverse incident.

Question 4: We are aware of circumstances where it may be necessary to re-label already frozen products (e.g. to change an expiry date because storage conditions have been altered). How is this currently handled in your establishment and how often does this occur? Are there any other examples of when this might be necessary?

Some respondents stated that relabelling of frozen products rarely occurs at their establishment, and that this is normally managed by maintaining traceability through appropriate annotation of relevant supporting documentation. A number of respondents anticipated that they will be applying the small label exemption set out in the Directive, enabling them to reflect any changes to the accompanying documentation as required. One respondent stated that re-labelling would be required at their establishment to adjust product expiry dates, but appropriate labels for frozen products have already been validated and will be used as required.

Question 5: For imported products, do you envisage applying the SEC on point of entry or delegating the responsibility to your third country supplier?

A number of respondents expected to be able to apply the same centre exemption for imported products that will be used within the importing establishment, meaning that the SEC will not need to be applied. One respondent expected to delegate the responsibility to the third country supplier, meaning that all products will already have the SEC applied upon import into the UK.

Question 6: Do you anticipate any issues or have any comments in relation to the interpretation of the same centre exemption, as outlined above?

A number of respondents requested clarification on whether the same centre exemption would apply to satellite site premises when these are governed under the same licence, or when they are geographically close to the licensed establishment. This exemption is not applicable to commercial distributors, therefore the relevant respondents did not provide a response for this question. One respondent requested further clarification on whether the SEC would need to be applied to products that would originally be covered by the same centre exemption, but then had to be moved to a different establishment due to patient care requirements.

Consultation questions relating to import

Question 1: What type of changes would you consider as substantial requiring prior approval from the HTA? How often do you envisage making the change at your establishment?

One respondent stated that substantial changes should include addition of new products, tissue types or suppliers. Regarding frequency of change, most respondents did not anticipate making substantial changes to their licence more than once per year.

Question 2: Do you anticipate any issues with providing the information and documentation required in Annex I and Annex III of the Import Directive?

Some respondents stated that they expect to only work with products imported by another establishment, therefore this question would not be applicable. The main issues raised related to the import of hematopoietic products by the national registries, responsible for the matching of donors and recipients and the procurement and import of bone marrow and blood stem cells. Respondents from the registries expressed their concern on the potential difficulties they could face in providing all of the documentation outlined in the two Annexes for each of the procurement organisation they work with globally. To address this issue, they expressed their preference for a proportionate approach to licensing that would safeguard the quality and safety of imported material as envisaged by the relevant Directive, without hindering the provision of life saving treatment for UK patients.

General comments

One respondent stated that further guidance is required on substantial changes that would require HTA approval. Issues were also raised by the national registries on the application of the SEC to hematopoietic products and how the exemptions set out in the Directives may apply to these products. A number of respondents questioned the additional benefit these regulations would bring and have asked what the impact of the UK leaving the EU would be. They also highlighted the importance of being able to continue to source these products globally, without any administrative burden introduced by the requirements of the coding Directive.

Consultation questions relating to cost of implementation

The majority of respondents stated that it is difficult to quantify costs at this stage before policy positions and associated guidance have been finalised. Respondents highlighted that costs would be associated with the implementation of new labelling and IT systems, updating of SOPs and other governance documents and training of staff on the new procedures. For some establishments, however, the cost will be negligible as they will introduce minor changes to existing systems and any training needs will be incorporated to routine training programmes.

Government response

In response to the comments received on the questions outlined above, minor amendments have been made to the regulations to provide clarity on a number of points identified. For example, the need to take a proportionate approach to licensing of the import of hematopoietic stem cells and the implementation of the exemptions set out in the Directives.

Changes have also been made to most of the initial costs included in the impact assessments, and expenses have been expanded to reflect more accurately the legal costs of amending third party agreements to the public sector. More information on the changes made to the impact assessments following the consultation is available within the two impact assessment documents, published together with this document.

It is helpful to understand how establishments envisage the exemptions working and how they will be implementing the requirements of the Directives. For example, ISBT 128 is almost universally going to be used for coding and that it was not clear to respondents how the same centre exemption would apply to satellite sites or sites that are geographically close to licensed establishments.

The responses provided during the consultation will also help the HTA to further develop and finalise their guidance document that will be published when the regulations come into force.

Consultation questions relating to the Human Fertilisation and Embryology (Amendment) Regulations 2017

Consultation questions related to coding

Question 1: Based on your current activities, how many times per year do you envisage applying the SEC to sperm, eggs or embryos at your centre?

Responses ranged between 50 and approximately 500 products requiring labelling with the SEC per year. One respondent stated that they will likely routinely label all donations handled by their centre regardless of whether any exemptions apply, to ensure consistency in practice.

Question 2: Can you identify any disadvantages that the coding Directive will bring to your centre?

The need to purchase additional IT systems, labelling equipment and labels and additional staff training were identified as disadvantages. The risk of survival of frozen gametes and embryos if additional labelling is required was also highlighted, as larger labels would affect the freezing process and it would potentially take longer to read and identify products using the 40-digit SEC instead of the current traceability system.

Question 3: Is it practical to require that accompanying documentation should be sealed within secondary/tertiary packaging? Are there any circumstances where this would not be practical?

No issues were raised in relation to this question.

Consultation questions relating to import

Question 1: Substantial changes to import activities, such as a change in third country supplier's premises, will require prior written approval from the HFEA before imports can continue. What type of change do you think is "substantial" and, therefore, would need approval?

Respondents suggested a number of potentially substantial changes, including changes to premises and donor recruitment policy, financial compensation, changes to the Person Responsible, premises, practices such as the procurement and processing of samples, personnel and Quality Indicators. Changes brought about as a result of regulatory inspections have also been suggested as substantial.

Question 2: It is the duty of the Person Responsible to assure the HFEA that the third country supplier operates to quality and safety standards equivalent to those of EU/EEA approved establishments. What steps do you think your centre will need to take to be able to provide the HFEA with this assurance?

Respondents suggested that the HFEA should provide a checklist of information related to third country suppliers that the licensed establishment could collect and make available on inspection. Another suggestion was that certification to show compliance with the EU Directives may be required, as well as HFEA licensing of third country suppliers. Quality audits were also suggested, which should be undertaken to ensure compliance with regulatory requirements.

General comments

An issue was raised on the small size of primary containers, which would make labelling with the SEC difficult. Labelling of accompanying documentation would be more practical and would minimise risk to the products due to handling difficulties when trying to label with or read the SEC. However, the coding Directive ((EU) 2015/565) makes a provision for small labels, outlining that the SEC does not need to be applied directly to the primary container where it is too small to accommodate the full code. Another suggestion was that it may be beneficial to apply the SEC to all products when transferred from one centre to another regardless of the transitional period exemption, to safeguard traceability during transfer and ongoing storage.

Consultation questions relating to cost of implementation

Respondents identified that their costs would be associated with updates of IT, labelling and quality systems to accommodate the application of the 40-digit SEC. Respondents undertaking import also suggested that they will need to incur costs associated with the collection of the mandatory information set out in the Directives. Respondents also questioned whether the increased requirement for documentation to import gametes from third countries would result in an increase in cost, which could potentially limit patient choice.

Government response

The Government has noted the information provided by respondents in relation to the changes that should be considered as substantial, and the action that would be required by establishments to provide assurance to the HFEA that third country suppliers operate to equivalent quality and safety standards. Some of the suggested information will already be known to the HFEA through licensing requirements, and the remaining suggestions will be taken into consideration in developing HFEA guidance for licensed establishments.

The Government has noted the concern expressed by a number of respondents that it is likely that the implementation of the Coding and Import Directives will provide only minimal increased benefit to patients in the reproductive sector in terms of quality and safety because existing arrangements largely fulfil the aims of the Directives.

In response to the comments received on the questions outlined above, the cost estimates have been updated and included in the impact assessments to more accurately reflect the costs expected to be incurred by establishments to implement the requirements of the Directives. Minor amendments have been made to the regulations to provide clarity.

Chapter 4: Conclusion and next steps

We are grateful to all those who contributed to the consultation process and the consultation on the proposed regulations implementing the new Directives. Respondents provided useful information on the practical and operational issues related to implementation.
Significant issues highlighted by respondents were the high cost of implementation and the potential changes that will affect implementation of the new Directives when the UK exits the EU in 2019.

The consultation responses have been helpful in identifying the different issues that the HTA and HFEA need to consider when developing policy positions and associated guidance and the responses have given us an insight into the potential challenges and how these can be overcome.

Proportionate licensing arrangements will be adopted to facilitate effective implementation. For example, the HTA has worked closely with establishments that work with hematopoietic stem cells to ensure that the transposition of the Directives will continue to safeguard the quality and safety of these products without affecting patient access.

Telephone interviews gained additional feedback on the assumptions behind the estimated cost impacts reported in the Consultation impact assessment. The information on the cost of implementation of the new Directives has been taken into consideration in the development of the final impact assessments.

Next steps

The UK has not yet experienced any major incidents involving problems associated with the identification or traceability of cells and tissues. However, the growing complexity of global trade in human cells and tissues means that the risks could be growing.

On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

The responses to the consultation have informed the development of the regulations. Where possible, the issues raised as part of the consultation have been taken into consideration, provided that their resolution is within the scope of the mandatory requirements set out by the two new Directives.

Minor amendments have been made to the draft regulations published as part of the consultation. The implementing regulations will be laid before Parliament.

Annex A List of organisations responding to the consultation

Note: Those respondents who indicated that they wanted their response to remain anonymous are not included in this list.

King’s College Hospital

Scottish National Blood Transfusion Service

NHSBT

NuVision Biotherapies Ltd

Royal Marsden

Anthony Nolan

HTA

Welsh Bone Marrow Registry

Scottish Government

Glasgow Royal Infirmary