



Jersey

HUMAN TRANSPLANTATION AND ANATOMY (JERSEY) LAW 2018

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Jersey

HUMAN TRANSPLANTATION AND ANATOMY (JERSEY) LAW 2018

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Jersey

HUMAN TRANSPLANTATION AND ANATOMY (JERSEY) LAW 2018

A LAW to make provision concerning the storage, removal and use of the body, or relevant material from, the body of a deceased person for transplantation, teaching of anatomy, medical education or research and therapeutic purposes, and for related matters.

Commencement [[see endnotes](#)]

1 Interpretation

- (1) In this Law unless the context otherwise requires –

“embryo” means a live human embryo where fertilisation is complete, and references to an embryo include an egg in the process of fertilisation, and, for this purpose, fertilisation is not complete until the appearance of a 2 cell zygote;

“excepted person” has the meaning given by Article 5(3);

“excluded material” means relevant material of a type specified to be excluded material by an Order made by the Minister under Article 7(1);

“express consent” has the meaning given –

- (a) in the case of an adult, by Article 4(4);
- (b) in the case of an excepted person, by Article 5(5);
- (c) in the case of a young person, by Article 6(3); or
- (d) in the case of a specified activity involving the removal of excluded material, by Article 7(3) or (4);

“gametes” means live human gametes, but do not include eggs in the process of fertilization;

“adult” means a person who is 18 years of age or over;

“Minister” means the Minister for Health and Social Services;

“parental responsibility” has the meaning given by Article 1(1) of the [Children \(Jersey\) Law 2002](#);

“prescribed” means prescribed by Order made by the Minister;

“registered medical practitioner” has the meaning given by Article 1(1) of the [Medical Practitioners \(Registration\) \(Jersey\) Law 1960](#);

“relevant material” means material, other than gametes, which consist of or includes human cells but does not include embryos outside the human body or hair and nail from the body of a living person;

“specified activity” has the meaning given by Article 2(2);

“transplantation activity” has the meaning given by Article 2(1);

“young person” means a person who is under 18 years of age.

- (2) For the purposes of this Law –
 - (a) a young person is competent to deal with the issue of consent if the young person is 16 years of age or over and it would appear to a reasonable person that the young person has sufficient understanding to make an informed decision on that issue; and
 - (b) a young person is not competent to deal with the issue of consent if the young person is under 16 years of age.
- (3) For the purposes of this Law, the following are qualifying relationships –
 - (a) spouse, civil partner or cohabiting partner;
 - (b) parent or child;
 - (c) brother or sister;
 - (d) grandparent or grandchild;
 - (e) child of a brother or sister;
 - (f) stepfather or stepmother;
 - (g) half-brother or half-sister;
 - (h) in the case of a person in respect of whom a care order is made under Article 24(1)(a) of the [Children \(Jersey\) Law 2002](#), the Minister; or
 - (i) friend of long standing.
- (4) In this Law, a reference to transplantation is to transplantation to a human body and includes transfusion.
- (5) For the purposes of this Law, material is not to be regarded as from a human body if it is created outside the human body.
- (6) For the purposes of this Law –
 - (a) references to material from the body of a living person are to material from the body of a person who is alive at the point of separation of the material;
 - (b) references to material from the body of a deceased person are to material from the body of a person who is not alive at the point of separation of the material.
- (7) For the purposes of this Law, a person is a cohabiting partner of another person if those 2 persons are living together as if they were spouses or civil partners for a continuous period of 6 months and neither of them are married to, or in a civil partnership, with any other person.

2 Transplantation activity and other specified activity

- (1) In this Law “transplantation activity” means –
 - (a) storing the body of a deceased person for the purpose of transplantation;

- (b) carrying out tests and investigations to determine whether relevant material is suitable for the purpose of transplantation;
 - (c) removing from the body of a deceased person, for the purpose of transplantation, any relevant material of which the body consists or which it contains;
 - (d) storing for the purpose of transplantation any relevant material which has come from the body of a deceased person; or
 - (e) using for the purpose of transplantation any relevant material which has come from the body of a deceased person.
- (2) In this Law “specified activity” means –
- (a) any transplantation activity;
 - (b) the removal of the body of a deceased person for use in –
 - (i) the teaching of anatomy,
 - (ii) medical education or research,
 - (iii) therapeutic purposes; or
 - (c) any other activity specified in Regulations made by the States.

3 Authorisation of specified activities

- (1) Subject to paragraph (2) and Article 10, a person may carry on a specified activity if carried out in Jersey –
- (a) with express consent in accordance with Article 4, 5, 6 or 7, as the case may be; or
 - (b) otherwise with consent deemed to be given in accordance with Article 4 or 9.
- (2) A transplantation activity within Article 2(1)(d) or (e) shall be lawful without the need for consent if it is carried out in Jersey and –
- (a) the relevant material has been lawfully imported into Jersey; or
 - (b) the removal of the relevant material from the person’s body took place lawfully outside Jersey.

4 Consent – adults

- (1) This Article does not apply in relation to consent for a specified activity involving the removal of excluded material.
- (2) Consent is deemed to be given for a specified activity involving the body, or relevant material from the body, of an adult who is not an excepted person unless –
- (a) a decision of the adult not to consent to the specified activity was in force immediately before his or her death;
 - (b) the case is one for which express consent is required in accordance with paragraph (3); or
 - (c) the case is not one for which express consent is required in accordance with paragraph (3) and –

- (i) a person who stood in a qualifying relation to the deceased person objects to the specified activity on the basis of views held by the deceased, and
 - (ii) a reasonable person would conclude that the person who stood in a qualifying relationship to the deceased person knows that the view most recently held by the deceased person before his or her death on consent for transplantation activities was that the deceased person opposed consent being given.
- (3) Express consent is required for a specified activity involving the body, or relevant material from the body, of an adult who is not an excepted person in each case mentioned in the first column of Table 1 in paragraph (4).
- (4) For each case mentioned in the first column of the following Table 1, the meaning of express consent in relation to a specified activity involving the body, or relevant material from the body, of an adult who is not an excepted person is as provided in the second column of that table –

TABLE 1

Case		Meaning of express consent
1.	The adult is alive.	The adult's consent.
2.	The adult has died and a decision of the adult as to consent, to the specified activity was in force immediately before his or her death.	The adult's consent.
3.	The adult has died, case 2 does not apply and the adult had appointed one or more persons under Article 8 to deal with the issue of consent in relation to the specified activity and such a person is available to give consent under the appointment.	Consent of the person or persons appointed.
4.	The adult has died, case 2 does not apply and the adult had appointed one or more persons to deal with the issue of consent in relation to the specified activity, but no such person is available to give consent under the appointment.	Consent of a person who stood in a qualifying relationship to the adult immediately before death.

5 Consent – excepted persons

- (1) This Article does not apply in relation to consent for a specified activity involving removal of excluded material.
- (2) Express consent is required for a specified activity involving the body, or relevant material from the body, of an excepted person.
- (3) An excepted person is –
 - (a) an adult who has died and who had not been ordinarily resident in Jersey for a period of at least 12 months immediately before dying; or

- (b) an adult who has died and for a significant period before dying lacked capacity to understand the notion that consent to a specified activity can be deemed to have been given.
- (4) For the purpose of paragraph (3), “significant period” means a sufficiently long period as to lead a reasonable person to conclude that it would be inappropriate for consent to be given.
- (5) For each case mentioned in the first column of the following Table 2, the meaning of express consent in relation to a specified activity involving the body, or relevant material from the body, of an excepted person is as provided in the second column of that table –

TABLE 2

Case		Meaning of express consent
1.	A decision of the excepted person as to consent to the specified activity was in force immediately before the excepted person’s death.	The excepted person’s consent.
2.	Case 1 does not apply and the excepted person had appointed one or more persons under Article 8 to deal with the issue of consent in relation to the specified activity and such a person is available to give consent under the appointment.	Consent of the person or persons appointed.
3.	Case 1 does not apply and the excepted person had appointed one or more person under Article 8 to deal with the issue of consent in relation to the specified activity, but no such person is available to give consent under the appointment.	Consent of a person who stood in a qualifying relationship to the excepted person immediately before death.
4.	Cases 1, 2 and 3 do not apply in relation to the excepted person.	Consent of a person who stood in a qualifying relationship to the excepted person immediately before death.

6 Consent – young persons

- (1) This Article does not apply in relation to consent for a specified activity involving the removal of excluded material.
- (2) Express consent is required for a specified activity involving the body, or relevant material from the body, of a young person.
- (3) For each case mentioned in the first column of the following Table 3, the meaning of express consent in relation to a specified activity involving the body, or relevant material from the body, of a young person is as provided in the second column of that table –

TABLE 3

Case		Meaning of express consent
1.	The young person is alive and case 2 does not apply.	The young person's consent.
2.	The young person is alive and no decision of the young person as to consent to the specified activity is in force, and either the young person is not competent to deal with the issue of consent or is competent to deal with the issue but fails to do so.	Consent of a person who has parental responsibility for the young person.
3.	The young person has died and a decision of the person as to consent to the specified activity was in force immediately before the young person's death.	The consent of the young person.
4.	The young person has died, case 3 does not apply, the young person had appointed one or more persons under Article 8 to deal with the issue of consent in relation to the specified activity and such a person is available to give consent under the appointment.	Consent of the person or persons appointed.
5.	The young person has died, case 3 does not apply and the young person had appointed one or more persons under Article 8 to deal with the issue of consent in relation to the specified activity, but no such person is available to give consent under the appointment.	Consent of a person who has parental responsibility for the young person immediately before the young person's death, or where no such person exists, the consent of a person in a qualifying relationship to the young person at that time.
6.	The young person has died and cases 3, 4 and 5 do not apply in relation to the young person.	Consent of a person who had parental responsibility for the young person immediately before the young person died or where no such person exists, the consent of a person in a qualifying relationship to the young person at that time.

- (4) In this Article, a decision or appointment made by a young person is only valid if, in accordance with Article 1(2), the young person was competent to deal with the issue of consent when it was made.

7 Consent – specified activities involving excluded material

- (1) The Minister may by Order specify relevant material that is excluded material for the purposes of this Law.
- (2) In the case of a specified activity involving the removal of excluded material, express consent is required, and such express consent must be specific to the removal of the excluded material in question.
- (3) For an adult, for each case mentioned in the first column of the following Table 4, the meaning of express consent in relation to a specified activity involving the removal of excluded material is as provided in the second column of that table –

TABLE 4

Case		Meaning of express consent
1.	The adult is alive.	The adult's consent.
2.	The adult has died and a decision of the adult as to consent to the specified activity was in force immediately before the adult's death.	The adult's consent.
3.	The adult has died, case 2 does not apply, the adult had appointed one or more persons under Article 8 to deal with the issue of consent in relation to the specified activity, and such a person is available to give consent under the appointment.	Consent of the person or persons appointed.
4.	The adult has died, case 2 does not apply and the adult had appointed one or more persons under Article 8 to deal with the issue of consent in relation to the specified activity, but no such person is available to give consent under the appointment.	Consent of a person who stood in a qualifying relationship to the adult immediately before the adult's death.
5.	The adult has died and cases 1, 2, 3 and 4 do not apply in relation to the adult.	Consent of a person who stood in a qualifying relationship to the adult immediately before the adult's death.

- (4) For a young person, for each case mentioned in the first column of the following Table 5, the meaning of express consent in relation to a specified activity involving the removal of excluded material is as provided in the second column of that table –

TABLE 5

Case		Meaning of express consent
1.	The young person is alive and case 2 does not apply.	The young person's consent.
2.	The young person is alive, no decision of the young person as to consent to the specified activity is in force, and either the young person is not competent to deal with the issue of consent or is competent to deal with the issue but fails to do so.	Consent of a person who has parental responsibility for the young person.
3.	The young person has died and a decision of the young person as to consent to the specified activity was in force immediately before the young person's death.	The young person's consent.
4.	The young person has died, case 3 does not apply, the young person had appointed one or more persons under Article 8 to deal with the issue of consent in relation to the specified activity and such a person is available to give consent under the appointment.	Consent of the person or persons appointed.
5.	The young person has died, case 3 does not apply and the young person had appointed one or more persons under Article 8 to deal with the issue of consent in relation to the specified activity, but no such person is available to give consent under the appointment.	Consent of a person who has parental responsibility for the young person immediately before the young person's death, or where no such person exists, the consent of a person in a qualifying relationship to the young person at that time.
6.	The young person has died and of cases 3, 4, and 5 do not apply in relation to the young person.	Consent of a person who had parental responsibility for the young person immediately before the young person died or where no such person exists, the consent of a person in a qualifying relationship to the young person at that time.

- (5) In this Article, a decision or appointment made by a young person is only valid if, in accordance with Article 1(2), the young person was competent to deal with the issue of consent when it was made.

8 Appointed persons

- (1) A person may appoint one or more persons to represent him or her after death in relation to express consent for the purpose of this Law.
- (2) An appointment under this Article may be general or may be limited to express consent in relation to one or more specified activities as may be specified in the appointment.
- (3) Subject to paragraph (4), an appointment under paragraph (1) may be made orally or in writing.
- (4) An oral appointment under this Article is only valid if made in the presence of at least 2 witnesses present at the time the appointment is made.
- (5) A written appointment under this Article is only valid if –
- (a) it is signed by the person making it in the presence of at least one witness who attests to the signature;
 - (b) it is signed at the direction of the person making it, in his or her presence and in the presence of at least one witness who attests to the signature; or
 - (c) it is contained in the will of the person making it.
- (6) Where a person appoints 2 or more persons in relation to the same specified activity, they are to be regarded as appointed to act jointly and severally unless the appointment provides that they are appointed to act jointly.
- (7) An appointment under this Article may be revoked at any time.
- (8) Paragraphs (3), (4), (5) and (6) apply to the revocation of an appointment under this Article as they apply to making of such an appointment.
- (9) A person appointed under this Article may at any time renounce the appointment.
- (10) A person may only act under an appointment under this Article if the person –
- (a) is an adult; and
 - (b) is not of a description prescribed.¹
- (11) For the purposes of Articles 4(4), 5(5), 6(3) and 7(3) or (4), if it is not reasonably practicable to communicate with a person appointed under this Article, within the time available if consent is to be acted upon, the person is to be treated as being not able to give consent to an activity under the appointment.
- (12) In this Article “adult” means a person who is 18 years of age or older.

9 Activities involving material from adults who lack capacity to consent

- (1) This Article applies where –
- (a) a transplantation activity under Article 2(1)(d) or (e) is carried out involving relevant material from the body of a person who –

- (i) is an adult, and
 - (ii) lacks capacity to consent to the transplantation activity; and
- (b) no decision of the person to consent, or not to consent, to the transplantation activity is in force.
- (2) Where this Article applies, the consent of the person referred to in paragraph (1) shall be deemed to have been given if the transplantation activity is carried out in circumstances of a kind specified in Regulations made under Article 18(3)(a).²

10 Other conditions regarding removal and use of relevant material from the body or removal of a body

- (1) Subject to paragraph (3), the removal and use of any relevant material from a body of a deceased person for a specified activity shall not be effected except by –
 - (a) a registered medical practitioner;
 - (b) a person qualified for registration as a registered medical practitioner,
who must be satisfied by personal examination of the body that life is extinct.
- (2) In doing anything permitted under paragraph (1), a person described in paragraph (1)(b) does not thereby contravene Article 2 of the [Medical Practitioners \(Registration\) \(Jersey\) Law 1960](#).
- (3) Where the removal of a body of a deceased person is for use in teaching of anatomy, medical education or research, therapeutic purposes, no such removal shall be effected –
 - (a) until after the end of the period of 48 hours beginning with the time of the person's death;
 - (b) without a certificate of cause of death;
 - (c) without notice to the Medical Officer of Health;
 - (d) except under the supervision of a registered medical practitioner, who must be satisfied by personal examination of the body that life is extinct; and
 - (e) except in a coffin or shell appropriate for such a removal,
and the person removing the body, or causing it to be removed, shall –
 - (i) make arrangements for the body to be decently interred in consecrated ground or in some public burial ground in use for persons of that religious persuasion to which the person whose body was so removed belonged, or be to be cremated; and
 - (ii) transmit a certificate of interment or cremation of such body to the Medical Officer of Health within 2 years from the date of removal of the body.
- (4) A person who contravenes paragraphs (1) shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (5) Subject to paragraph (6), a person who contravenes paragraph (3) shall be guilty of an offence and liable to a fine.

- (6) Where a person removes the body of a deceased person for use in the teaching of anatomy, for use in medical education or research or for therapeutic purposes, the person shall not be guilty of an offence if the person reasonably believes that 48 hours has passed since the time of the person's death.

11 Prohibition of specified activity without consent

- (1) Subject to paragraph (2), a person who carries out specified activity in Jersey without consent shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (2) A person shall not be guilty of an offence under paragraph (1) if the person reasonably believes that –
 - (a) the specified activity is carried out with consent; or
 - (b) the activity carried out is not a specified activity.
- (3) Subject to paragraph (4), a person who makes a false or misleading representation to another person whom he or she knows, or believes, intends to carry out a specified activity –
 - (a) that there is a consent to the activity; or
 - (b) that the activity is not a specified activity,shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (4) A person shall not be guilty of an offence under paragraph (3), if the person did not know that the representation was false or misleading or believed it to be true.
- (5) No proceedings for an offence under this Article may be instituted except by or with the consent of the Attorney General.

12 Preservation for transplantation

- (1) Where relevant material from the body of a deceased person lying in a hospital, nursing home or other institution is or may be suitable for use for transplantation, the person having the control or management of the institution may –
 - (a) take steps for the purpose of preserving the body or relevant material from the body for use for transplantation; and
 - (b) to retain the body for purpose of paragraph (a).
- (2) Paragraph (1)(a) applies to permit only –
 - (a) the taking of minimum steps necessary for the purpose mentioned in that sub-paragraph; and
 - (b) the use of the least invasive procedure.
- (3) Paragraph (1) ceases to apply once it has been established that express consent authorizing the removal of relevant material from the body of the deceased has not been, and will not be, given and that consent is not deemed to be given.
- (4) An act done under paragraph (1) shall be treated as being an activity to which Article 3 does not apply.

- (5) In this Article “person having the control or management of the institution” includes a person authorized by the person having management or control of the institution to take the steps under paragraphs (1)(a) or to retain the body under paragraph (1)(b).

13 Inquest or post-mortem examination of a body by the Viscount

- (1) Nothing in this Law applies to anything done for the purposes of functions of the Viscount under the [Inquests and Post-Mortem Examinations \(Jersey\) Law 1995](#).
- (2) Where a person has reason to believe that an inquest may be required to be held on a body or that a post-mortem examination of a body may be required at the instance of the Viscount, that person shall not, except with the consent of the Viscount –
- (a) give consent under this Law in respect of the body; or
 - (b) act on such consent given by any other person.
- (3) A person who contravenes paragraph (2) shall be guilty of an offence and liable to a fine.

14 Other lawful dealings with body

Nothing in this Law shall be construed as rendering unlawful any dealing with the body, or with any part of the body, of a deceased person which is lawful otherwise than under this Law.

15 False or misleading information

- (1) A person who makes, in any document, material, evidence or information which is required to be provided to any person entitled to the information under this Law, a statement that –
- (a) at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact; or
 - (b) omits to state any material fact the omission of which makes the statement false or misleading,
- shall be guilty of an offence and liable to a fine of level 3 on the standard scale.
- (2) A person shall not be guilty of an offence under paragraph (1) if the person did not know that the statement was false or misleading or believed it to be true.

16 Criminal liability of partners, directors and other officers

- (1) Where an offence under this Law committed by a limited liability partnership, a separate limited partnership, any other partnership having separate legal personality or a body corporate, is proved to have been committed with the consent or connivance of –
- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or

- (b) any person purporting to act in any such capacity,
the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with the member's functions of management as if he or she were a director of the body corporate.

17 Limitation of liability

- (1) A person to whom this Article applies shall not be liable in damages for anything done or omitted in the discharge or purported discharge of any function under, or authorized by or under, this Law or any other enactment unless it is shown that the act or omission was in bad faith or without due and reasonable care.
- (2) This Article applies to the States, any Minister or the Medical Officer of Health or any person who is acting as, an officer, employee or agent in an administration of the States for which the Minister is assigned responsibility.
- (3) The limitation of liability under this Article does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the [Human Rights \(Jersey\) Law 2000](#).

18 Regulations

- (1) The States shall by Regulations make provision for the registration of express consent, or a decision not to consent, to a specified activity.
- (2) The States may by Regulations make any provision as the States think fit for the purposes of carrying this Law into effect.
- (3) Without prejudice to the generality of paragraph (2), Regulations made under this Article may –
 - (a) specify circumstances in which a transplantation activity may be carried out for the purpose of Article 9;
 - (b) provide for the charging of fees for reports required under this Law or the Regulations and for the amount of such fees;
 - (c) create offences for contravention of the Regulations and specify penalties for such offences not exceeding imprisonment for 2 years and a fine;
 - (d) make such consequential, incidental, supplementary and transitional provisions as may appear to be necessary or expedient, including provisions making amendments to any other enactment as appear to the States to be expedient –
 - (i) for the general purposes, or any particular purpose, of this Law,
 - (ii) in consequence of any provision made by or under this Law, or
 - (iii) for giving full effect to this Law or any provision of it.³

19 Orders

The Minister may by Order make provision prescribing any matter that is to be prescribed under this Law.

20 Codes of practice

- (1) The Minister may issue codes of practice for the purposes of this Law and, in particular (but without limitation) –
 - (a) for the guidance of any person acting under this Law in connection with a transplantation activity or other specified activity;
 - (b) with respect to such other matters, arising out of this Law, as the Minister may think fit.
- (2) A person must have regard to any relevant code of practice issued under paragraph (1) where that person is acting under this Law.
- (3) Paragraph (4) applies where it appears to the Court or to the Tribunal, when conducting any civil or criminal proceedings, that –
 - (a) a provision of a code of practice issued under this Article; or
 - (b) a failure to comply with a requirement of a code of practice issued under paragraph (1),is relevant to a question arising in those proceedings.
- (4) Where this paragraph applies, the relevant provision or failure must be taken into account in determining the question, but a failure to comply with a code of practice issued under paragraph (1) shall not of itself make a person liable to any civil or criminal proceedings.
- (5) The Minister may amend a code of practice issued under paragraph (1) from time to time as the Minister may see fit.
- (6) A code of practice issued under paragraph (1) may make, as respects any matter in relation to which it makes provision –
 - (a) the same provision for all cases, or different provision for different cases or classes of case, or different provision for the same case or class of case for different purposes; and
 - (b) any such provision either unconditionally or subject to any specified conditions.
- (7) Before issuing or amending a code of practice issued under paragraph (1), the Minister must consult such bodies as appear to the Minister to be concerned.
- (8) The Minister must publish any code of practice issued under paragraph (1) which is for the time being in force in such manner as may appear to the Minister to be appropriate for bringing it to the attention of persons likely to be concerned with or affected by its provisions.

21 Rules of Court

The power to make Rules of Court under the [Royal Court \(Jersey\) Law 1948](#) shall include a power to make Rules for the purposes of this Law.

22 4

23 Citation and commencement

This Law may be cited as the Human Transplantation and Anatomy (Jersey) Law 2018 and shall come into force on such day or days as the States may by Act appoint.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	Project No (where applicable)
Human Transplantation and Anatomy (Jersey) Law 2018	L.27/2018	1 July 2019 (R&O.46/2019)	P.57/2018

Projects available at www.statesassembly.gov.je

Table of Renumbered Provisions

Original	Current
None	

Table of Endnote References

-
- ¹ Article 8(10) *unofficial text change, “or” deleted and “and” inserted instead*
- ² Article 9(2) *unofficial text change, “18(2)(a)” deleted and “18(3)(a)” inserted instead*
- ³ Article 18(3) *unofficial text change, “(1)” deleted and “(2)” inserted instead*
- ⁴ Article 22 *spent, omitted*