



Human Tissue (Scotland) Act 2006

2006 asp 4

PART 1

TRANSPLANTATION ETC.

General functions of the Scottish Ministers

1 Duties of the Scottish Ministers as respects transplantation, donation of body parts etc.

It is the duty of the Scottish Ministers to—

- (a) promote, support and develop programmes of transplantation;
- (b) promote information and awareness about the donation for transplantation of parts of a human body;
- (c) promote the taking of any necessary measures relating to the quality and safety, storage and use of any such part donated for that purpose.

2 Assistance and support

- (1) The Scottish Ministers may provide assistance and support to any person providing, or proposing to provide, a service relating to transplantation.
- (2) Assistance and support provided under subsection (1) is to be provided on such terms, including terms as to payment, as the Scottish Ministers think fit.
- (3) In this section, “assistance” includes financial assistance.

Use of part of body of deceased person for transplantation, research etc.

3 Use of part of body of deceased person for transplantation, research etc.

- (1) Part of the body of a deceased person may be removed from the body and used, for the purposes of—
 - (a) transplantation;
 - (b) research;

- (c) education or training;
- (d) audit,

only if the requirements of subsection (2) are satisfied as respects the part.

(2) The requirements are that—

- (a) the removal and use for the purpose in question are authorised in accordance with section 6, 7, 8, 9 or, as the case may be, 10; and
- (b) the removal is carried out in accordance with section 11.

4 Disapplication of sections 3, 6 to 11 and 16 in certain circumstances

Sections 3, 6 to 11 and 16 do not apply—

- (a) to anything done for the purposes of the functions or under the authority of the procurator fiscal;
- (b) in relation to the removal of any part of the body of a deceased person during a post-mortem examination of the body or the subsequent retention and use of the part or in relation to retention and use of a part of a body to which section 36 applies;
- (c) in relation to retention and use of tissue sample to which section 38 or 47 applies or an organ to which section 40 or 48 applies;
- (d) as respects the removal, retention or use of any part of a body of a deceased person if it is the body of a person who died before the day on which section 3 comes into force and at least 100 years have elapsed since the date of the person's death.

5 Consent by procurator fiscal to removal of part of body

- (1) Where a person knows, or has reason to believe, that an examination of the body of a deceased person is, or may be, required for the purposes of the functions of the procurator fiscal, the person may not, except with the consent of the procurator fiscal, remove from the body any part of it, or authorise such removal, for a purpose referred to in section 3(1).
- (2) For the purposes of subsection (1), consent by the procurator fiscal may be given verbally and if so given is to be confirmed in writing as soon as is reasonably practicable.

6 Authorisation: adult

- (1) An adult may authorise the removal and use of a part of the adult's body after the adult's death for one or more of the purposes referred to in section 3(1).
- (2) Authorisation by virtue of subsection (1)—
 - (a) must be—
 - (i) in writing; or
 - (ii) expressed verbally;
 - (b) subject to subsections (3) and (4), may be withdrawn in writing.
- (3) If the adult is blind or unable to write, withdrawal of authorisation by virtue of subsection (2)(b) may be signed by another adult (a “signatory”) on the adult's behalf and if it is so signed it must be witnessed by one witness.

- (4) Withdrawal of authorisation which is signed by a signatory on behalf of an adult by virtue of subsection (3) must contain a statement signed by both the signatory and the witness in the presence of the adult and of each other that the adult, in the presence of them both, expressed the intention to withdraw the authorisation and requested the signatory to sign the withdrawal on behalf of the adult.
- (5) Nothing in subsection (3) prevents an adult who is blind from withdrawing, in accordance with subsection (2)(b), any authorisation by virtue of subsection (1).
- (6) In subsection (2)(a)(i), “writing” includes, in relation to the requirement there for authorisation to be in writing, representation of a character in visible form.

7 Authorisation by adult’s nearest relative

- (1) If there is in force immediately before an adult’s death no authorisation by the adult by virtue of section 6(1) of removal and use of any part of the adult’s body for transplantation, the nearest relative of the deceased adult may, subject to subsection (4), authorise the removal and use of any part for one or more of the purposes referred to in section 3(1).
- (2) If—
 - (a) there is in force immediately before an adult’s death authorisation by the adult by virtue of section 6(1) of removal and use of a part of the adult’s body for transplantation;
 - (b) the authorisation does not expressly include removal and use of the part for a particular purpose referred to in paragraphs (b) to (d) of section 3(1),the nearest relative of the deceased adult may, subject to subsection (4), authorise the removal and use of the part for the particular purpose in question which is not included in the authorisation.
- (3) If—
 - (a) there is in force immediately before an adult’s death authorisation by the adult by virtue of section 6(1) of removal and use of a particular part of the adult’s body for transplantation;
 - (b) the authorisation does not expressly include removal and use of another particular part,the nearest relative of the deceased adult may, subject to subsection (4), authorise the removal and use of the other particular part which is not so included for one or more of the purposes referred to in paragraphs (b) to (d) of section 3(1).
- (4) The nearest relative may not give authorisation under—
 - (a) subsection (1) if the relative has actual knowledge that the adult was unwilling for any part of the adult’s body, or the part in question, to be used for transplantation;
 - (b) subsection (2) if the relative has actual knowledge that the adult was unwilling for the part to be used for the purpose in question;
 - (c) subsection (3) if the relative has actual knowledge that the adult was unwilling for any other part of the adult’s body or, as the case may be, the other particular part in question, to be used for transplantation.
- (5) For the purposes of—

- (a) subsection (4)(a), the mere fact that there is no authorisation by the adult in force is not to be regarded as unwillingness by the adult referred to in that subsection;
 - (b) subsection (4)(b), the mere fact that the authorisation does not include a particular purpose referred to in paragraphs (b) to (d) of section 3(1) is not to be regarded as unwillingness by the adult referred to in that subsection;
 - (c) subsection (4)(c), the mere fact that there is no authorisation by the adult in force as respects the removal and use of other parts, or the other particular part in question, for transplantation is not to be regarded as unwillingness by the adult referred to in that subsection.
- (6) Authorisation by virtue of subsection (1), (2) or (3)—
- (a) must be—
 - (i) in writing and signed; or
 - (ii) expressed verbally,
 by the nearest relative;
 - (b) subject to subsection (7), may be withdrawn in writing so signed.
- (7) To the extent that authorisation by virtue of subsection (1) is for the purposes of transplantation, it may not be withdrawn.

8 Authorisation: child 12 years of age or over

- (1) A child who is 12 years of age or over may authorise the removal and use of a part of the child's body after the child's death for one or more of the purposes referred to in section 3(1).
- (2) Subject to subsections (3) to (5), authorisation by virtue of subsection (1)—
 - (a) must be in writing;
 - (b) may be withdrawn in writing.
- (3) If the child is blind or unable to write, authorisation by virtue of subsection (1) and withdrawal of such authorisation may be signed by an adult (a “signatory”) on the child's behalf and if it is so signed it must be witnessed by one witness.
- (4) Authorisation by virtue of subsection (1), or withdrawal of such authorisation, which is signed by a signatory on behalf of a child by virtue of subsection (3) must contain a statement signed by both the signatory and the witness in the presence of the child and of each other that the child, in the presence of them both, expressed the intention to give the authorisation or, as the case may be, withdraw the authorisation and requested the signatory to sign the authorisation or, as the case may be, the withdrawal on behalf of the child.
- (5) Authorisation by virtue of subsection (1) which is signed by a signatory on behalf of a child by virtue of subsection (3) must contain or be accompanied by—
 - (a) certification in writing signed by the signatory that, in the opinion of the signatory;
 - (b) certification in writing signed by the witness that, in the opinion of the witness, the child understands the effect of the authorisation and is not acting under undue influence in giving it.
- (6) Nothing in subsection (3) prevents a child who is blind from giving authorisation by virtue of subsection (1) in accordance with subsection (2)(a) or withdrawing,

in accordance with subsection (2)(b), any authorisation by the child by virtue of subsection (1) (including authorisation signed by a signatory in accordance with subsection (3)).

- (7) In subsection (2)(a), “writing” includes, in relation to the requirement there for authorisation to be in writing, but only where the authorisation in writing is not signed by a signatory on behalf of the child, representation of a character in visible form.

9 Authorisation as respects child who dies 12 years of age or over by person with parental rights and responsibilities

- (1) If there is in force immediately before the death of a child who died 12 years of age or over no authorisation by the child by virtue of section 8(1) of removal and use of any part of the child’s body for transplantation, a person who, immediately before the death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority) may, subject to subsection (4), authorise removal and use of any part for one or more of the purposes referred to in section 3(1).

- (2) If—

- (a) there is in force immediately before the death of a child who died 12 years of age or over authorisation by the child by virtue of section 8(1) of removal and use of a part of the child’s body for transplantation;
- (b) the authorisation does not expressly include removal and use of the part for a particular purpose referred to in paragraphs (b) to (d) of section 3(1),

a person who, immediately before the death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority) may, subject to subsection (4), authorise the removal and use of the part for the particular purpose in question which is not included in the authorisation.

- (3) If—

- (a) there is in force immediately before the child’s death authorisation by the child by virtue of section 8(1) of removal and use of a particular part of the child’s body for transplantation;
- (b) the authorisation does not expressly include removal and use of another particular part,

a person who, immediately before the death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority) may, subject to subsection (4), authorise the removal and use of the other particular part which is not so included for one or more of the purposes referred to in paragraphs (b) to (d) of section 3(1).

- (4) A person may not give authorisation under—

- (a) subsection (1) if the person has actual knowledge that the child was unwilling for any part of the child’s body, or the part in question, to be used for transplantation;
- (b) subsection (2) if the person has actual knowledge that the child was unwilling for the part to be used for the purpose in question;
- (c) subsection (3) if the person has actual knowledge that the child was unwilling for any other part of the child’s body or, as the case may be, the other particular part in question, to be used for transplantation.

- (5) For the purposes of—

- (a) subsection (4)(a), the mere fact that there is no authorisation by the child in force is not to be regarded as unwillingness by the child referred to in that subsection;
 - (b) subsection (4)(b), the mere fact that the authorisation by the child does not include a particular purpose referred to in paragraphs (b) to (d) of section 3(1) is not to be regarded as unwillingness by the child referred to in that subsection;
 - (c) subsection (4)(c), the mere fact that there is no authorisation by the child in force as respects the removal and use of other parts, or the other particular part in question, for transplantation is not to be regarded as unwillingness by the child as referred to in that subsection.
- (6) Authorisation by virtue of subsection (1), (2) or (3)—
- (a) must be—
 - (i) in writing and signed; or
 - (ii) expressed verbally,
 by the person who gives the authorisation in accordance with that subsection;
 - (b) subject to subsection (7), may be withdrawn in writing signed by the person.
- (7) To the extent that authorisation by virtue of subsection (1) is for the purposes of transplantation, it may not be withdrawn.

10 Authorisation as respects child who dies under 12 years of age

- (1) A person who immediately before the death of a child who died under 12 years of age had parental rights and parental responsibilities in relation to the child (but who is not a local authority) may authorise removal and use of a part of the body of the child for one or more of the purposes referred to in section 3(1).
- (2) Authorisation by virtue of subsection (1)—
- (a) must be—
 - (i) in writing and signed; or
 - (ii) expressed verbally,
 by the person who gives the authorisation in accordance with that subsection;
 - (b) subject to subsection (3), may be withdrawn in writing signed by the person.
- (3) To the extent that authorisation by virtue of subsection (1) is for the purposes of transplantation, it may not be withdrawn.

11 Removal of part of body of deceased person: further requirements

- (1) The removal of a part of the body of a deceased person for any of the purposes referred to in section 3(1) may be carried out only by—
- (a) a registered medical practitioner; or
 - (b) a person authorised to do so in accordance with regulations made by the Scottish Ministers.
- (2) Regulations under subsection (1)(b) may in particular provide for a registered medical practitioner to authorise the carrying out of the removal by a person who is not such a practitioner.
- (3) The removal of part of the body of a deceased person may not be—

- (a) carried out for any of the purposes referred to in section 3(1) unless the person who proposes to carry it out, before doing so, complies with the requirements specified in subsection (4);
 - (b) authorised, by virtue of regulations under subsection (1)(b), unless the registered medical practitioner who proposes to authorise it, before doing so, complies with those requirements.
- (4) The requirements are that the person (and, where a registered medical practitioner proposes to authorise the carrying out of the removal by virtue of regulations under subsection (1)(b), the practitioner) must be satisfied—
 - (a) either—
 - (i) by personal examination of the body, that life is extinct; or
 - (ii) that another registered medical practitioner, by such personal examination, is so satisfied;
 - (b) that, if the consent of the procurator fiscal to the carrying out of the removal is required by section 5(1), the consent has been given; and
 - (c) that the removal is authorised in accordance with section 6, 7, 8, 9 or, as the case may be, 10.
- (5) For the purposes of subsection (4)(c), the person or, as the case may be, the registered medical practitioner is entitled to be satisfied that the removal is authorised in accordance with the section in question if—
 - (a) the person or, as the case may be, the practitioner has no reason to believe that the authorisation was not so given or (in a case where by virtue of this Act it may be withdrawn) that it was subsequently withdrawn;
 - (b) in the case of authorisation by virtue of section 6(1) which is in writing, it bears—
 - (i) to be as respects the deceased adult;
 - (ii) to authorise removal of the part for the purpose in question;
 - (iii) to be by the adult;
 - (c) in the case of authorisation by virtue of section 6(1) which is expressed verbally, there is what the person or, as the case may be, the medical practitioner considers to be an appropriate record of the authorisation and the authorisation bears from the record—
 - (i) to be as respects the deceased adult;
 - (ii) to authorise removal of the part for the purpose in question;
 - (iii) to have been expressed verbally by the adult;
 - (d) in the case of authorisation by virtue of section 7(1) which is in writing, it bears—
 - (i) to be as respects the deceased adult;
 - (ii) to authorise removal of the part for the purpose in question;
 - (iii) to be by, and signed by, the nearest relative of the deceased adult;
 - (e) in the case of authorisation by virtue of section 7(1) which is expressed verbally, there is what the person or, as the case may be, the medical practitioner considers to be an appropriate record of the authorisation and the authorisation bears from the record—
 - (i) to be as respects the deceased adult;
 - (ii) to authorise removal of the part for the purpose in question;

- (iii) to have been expressed verbally by the nearest relative of the deceased adult;
- (f) in the case of authorisation by virtue of section 7(2) which is in writing, there bears to be authorisation by the adult as referred to in paragraphs (a) and (b) of that section, and the authorisation by virtue of that section bears—
 - (i) to be as respects the deceased adult;
 - (ii) to authorise removal of the part for the purpose in question;
 - (iii) to be by, and signed by, the nearest relative of the deceased adult;
 - (iv) to be as respects a part which is included in the authorisation by the adult and for a purpose referred to in paragraphs (b) to (d) of section 3(1) which is not included in the authorisation by the adult;
- (g) in the case of authorisation by virtue of section 7(2) which is expressed verbally, there is what the person or, as the case may be, the medical practitioner considers to be an appropriate record of the authorisation and the authorisation bears from the record—
 - (i) to be as respects the deceased adult;
 - (ii) to authorise removal of the part for the purpose in question;
 - (iii) to have been expressed verbally by the nearest relative of the deceased adult;
 - (iv) to be as respects a part which is included in the authorisation by the adult and for a purpose referred to in paragraphs (b) to (d) of section 3(1) which is not included in the authorisation by the adult;
- (h) in the case of authorisation by virtue of section 7(3) which is in writing, there bears to be authorisation by the adult as referred to in paragraphs (a) and (b) of that section, and the authorisation by virtue of that section bears—
 - (i) to be as respects the deceased adult;
 - (ii) to authorise removal of the part for the purpose in question;
 - (iii) to be by, and signed by, the nearest relative of the deceased adult;
 - (iv) to be as respects a part which is not included in the authorisation by the adult and for a purpose referred to in paragraphs (b) to (d) of section 3(1);
- (i) in the case of authorisation by virtue of section 7(3) which is expressed verbally, there is what the person or, as the case may be, the medical practitioner considers to be an appropriate record of the authorisation and the authorisation bears from the record—
 - (i) to be as respects the deceased adult;
 - (ii) to authorise removal of the part for the purpose in question;
 - (iii) to have been expressed verbally by the nearest relative of the deceased adult;
 - (iv) to be as respects a part which is not included in the authorisation by the adult and for a purpose referred to in paragraphs (b) to (d) of section 3(1);
- (j) in the case of authorisation by virtue of section 8(1) which is not signed by a person on behalf of the child, it bears—
 - (i) to be in writing;
 - (ii) to be as respects the deceased child;
 - (iii) to authorise removal of the part for the purpose in question;
 - (iv) to be by the child while 12 years of age or over;

Status: This is the original version (as it was originally enacted).

- (k) in the case of authorisation by virtue of section 8(1) which is signed by a person on behalf of the child, it bears—
 - (i) to be in writing;
 - (ii) to be as respects the deceased child;
 - (iii) to authorise removal of the part for the purpose in question;
 - (iv) to be on behalf of the child while 12 years of age or over;
 - (v) to be signed by an adult on behalf of the child because the child was blind or unable to write at the time of giving the authorisation;
 - (vi) to be witnessed by one witness who was an adult when witnessing and was present when the other adult signing the authorisation signed it;
 - (vii) to contain a statement signed by both the signatory and the witness in the presence of the child and of each other that the child, in the presence of them both, expressed the intention to give the authorisation and requested the signatory to sign it on the child's behalf;
 - (viii) to contain or be accompanied by certification in writing signed by the person signing the authorisation on behalf of the child that, in the opinion of the person, the child understood the effect of the authorisation and was not acting under undue influence in giving it and by certification in writing signed by the witness that, in the opinion of the witness, the child so understood and was not so acting;
- (l) in the case of authorisation by virtue of section 9(1) which is in writing, it bears—
 - (i) to be as respects the deceased child (who died 12 years of age or over);
 - (ii) to authorise removal of the part for the purpose in question;
 - (iii) to be by a person who, immediately before the child's death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority) and signed by the person;
- (m) in the case of authorisation by virtue of section 9(1) which is expressed verbally, there is what the person or, as the case may be, the medical practitioner considers to be an appropriate record of the authorisation and the authorisation bears from the record—
 - (i) to be as respects the deceased child (who died 12 years of age or over);
 - (ii) to authorise removal of the part for the purpose in question;
 - (iii) to have been expressed verbally by a person who, immediately before the child's death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority);
- (n) in the case of authorisation by virtue of section 9(2) which is in writing, there bears to be authorisation by the child as referred to in paragraphs (a) and (b) of that section and the authorisation by virtue of that section bears—
 - (i) to be as respects the deceased child (who died 12 years of age or over);
 - (ii) to authorise removal of the part for the purpose in question;
 - (iii) to be by a person who, immediately before the child's death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority) and signed by the person;
 - (iv) to be as respects a part which is included in the authorisation by the child and for a purpose referred to in paragraphs (b) to (d) of section 3(1) which is not included in the authorisation by the child;

- (o) in the case of authorisation by virtue of section 9(2) which is expressed verbally, there is what the person or, as the case may be, the medical practitioner considers to be an appropriate record of the authorisation and the authorisation bears from the record—
 - (i) to be as respects the deceased child (who died 12 years of age or over);
 - (ii) to authorise removal of the part for the purpose in question;
 - (iii) to have been expressed verbally by a person who, immediately before the child's death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority);
 - (iv) to be as respects a part which is included in the authorisation by the child and for a purpose referred to in paragraphs (b) to (d) of section 3(1) which is not included in the authorisation by the child;
- (p) in the case of authorisation by virtue of section 9(3) which is in writing, there bears to be authorisation by the child as referred to in paragraphs (a) and (b) of that section and the authorisation by virtue of that section bears—
 - (i) to be as respects the deceased child (who died 12 years of age or over);
 - (ii) to authorise removal of the part for the purpose in question;
 - (iii) to be by a person who, immediately before the child's death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority) and signed by the person;
 - (iv) to be as respects a part which is not included in the authorisation by the child and for a purpose referred to in paragraphs (b) to (d) of section 3(1);
- (q) in the case of authorisation by virtue of section 9(3) which is expressed verbally, there is what the person or, as the case may be, the medical practitioner considers to be an appropriate record of the authorisation and the authorisation bears from the record—
 - (i) to be as respects the deceased child (who died 12 years of age or over);
 - (ii) to authorise removal of the part for the purpose in question;
 - (iii) to have been expressed verbally by a person who, immediately before the child's death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority);
 - (iv) to be as respects a part which is not included in the authorisation by the child and for a purpose referred to in paragraph (b) to (d) of section 3(1);
- (r) in the case of authorisation by virtue of section 10(1) which is in writing, it bears—
 - (i) to be as respects the deceased child (who died under 12 years of age);
 - (ii) to authorise removal of the part for the purpose in question;
 - (iii) to be by a person who, immediately before the child's death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority) and signed by the person;
- (s) in the case of authorisation by virtue of section 10(1) which is expressed verbally, there is what the person or, as the case may be, the medical practitioner considers to be an appropriate record of the authorisation and the authorisation bears from the record—
 - (i) to be as respects the deceased child (who died under 12 years of age);
 - (ii) to authorise removal of the part for the purpose in question;

- (iii) to have been expressed verbally by a person who, immediately before the child's death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority).

12 Removal of tissue sample to determine viability of transplantation

If it appears to a person removing, in accordance with authorisation by virtue of section 6(1), 7(1), (2) or (3), 8(1), 9(1), (2) or (3) or 10(1), any part of the body of a deceased person for transplantation that it is necessary or expedient to examine tissue sample removed from the part or any other part of the body to determine the viability of the transplantation (including in particular the safety of the transplant for the person who is to receive it), the person carrying out the removal may remove and secure the examination of such tissue sample from the part or the body as the person considers necessary or expedient for that purpose.

13 Preservation for transplantation

- (1) Where part of the body of a deceased person lying in premises to which this section applies is or may be suitable for use for transplantation, the managers of the premises may—
 - (a) take steps for the purpose of preserving the part for use for transplantation;
 - (b) retain the body for that purpose,but may not move the part or body to other premises.
- (2) Authority under subsection (1)(a) extends only to—
 - (a) the taking of the minimum steps necessary for the purpose mentioned in that paragraph;
 - (b) the use of the least invasive procedure.
- (3) Authority under subsection (1)—
 - (a) extends to any person authorised to act under the authority by the managers of the premises in question;
 - (b) ceases to apply once it has been established that authorisation for removal of the part for transplantation has not been, and will not be, given.
- (4) The premises to which this section applies are—
 - (a) a health service hospital;
 - (b) premises in which a registered independent health care service is provided.
- (5) In this section—
 - “Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c. 29);
 - “health service hospital” has the meaning given by section 108(1) of that Act;
 - “managers” means—
 - (a) where the body is lying in a health service hospital, the Health Board or Special Health Board responsible for the administration of the hospital;
 - (b) where the body is lying in premises in which a registered independent health care service is provided, the person providing the service;
 - “registered independent health care service” means an independent health care service (as defined in section 2(5) of the Regulation of Care (Scotland) Act 2001 (asp 8)) registered under Part 1 of that Act;

“Special Health Board” means a board constituted by order under section 2(1) (b) of the National Health Service (Scotland) Act 1978 (c. 29).

14 Part of body removed before day on which section 3 comes into force

A part—

(a) removed—

(i) from the body of a deceased person before the day on which section 3 comes into force for the purposes of transplantation, research, education, training or audit;

(ii) other than during an examination having the characteristics of a post-mortem examination (whether or not carried out for the purposes of the functions, or under the authority, of the procurator fiscal) or an anatomical examination (within the meaning of section 1(1) of the Anatomy Act 1984 (c. 14); and

(b) held immediately before that day for use for any such purpose, may be retained and used for any such purpose.

15 Existing request by adult not acted on before commencement of sections 3 and 6

(1) Where, immediately before the coming into force of sections 3 and 6—

(a) there is in force a request by an adult that a part of the adult’s body be used after the adult’s death for transplantation either—

(i) in writing; or

(ii) expressed verbally (whether or not expressed during the adult’s last illness and whether or not expressed in the presence of any witnesses); and

(b) the request has not been acted on,

the request is to be treated for the purposes of this Part as if it were authorisation by the adult in accordance with section 6(1) (in writing or, as the case may be, expressed verbally).

(2) In subsection (1), “writing” includes, in relation to the reference there to a request by an adult which is in force immediately before the coming into force of sections 3 and 6, representation of a character in visible form.

16 Offences: removal or use of part of body of deceased person for transplantation, research etc.

(1) A person commits an offence if the person removes, after the day on which section 3 comes into force, a part of the body of a deceased person for any of the purposes referred to in section 3(1) or uses after that day any part so removed for any such purpose and—

(a) the removal or, as the case may be, the use for the purpose in question is not authorised in accordance with section 6, 7, 8, 9 or, as the case may be, 10; or

(b) any of the requirements in section 11(1) or (4)(a) is not satisfied as respects the part.

(2) Where a person is charged with an offence under subsection (1) it is a defence for the person to show that, at the time of carrying out the activity, the person reasonably

believed that the removal and use were authorised as referred to in paragraph (a) of that subsection or, as the case may be, the requirements in question referred to in paragraph (b) of that subsection were satisfied as respects the part.

- (3) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to—
 - (i) imprisonment for a term not exceeding 12 months;
 - (ii) a fine not exceeding the statutory maximum; or
 - (iii) both;
 - (b) on conviction on indictment, to—
 - (i) imprisonment for a term not exceeding 3 years;
 - (ii) a fine; or
 - (iii) both.

Restrictions on transplants involving live donor

17 Restrictions on transplants involving live donor

- (1) Subject to subsections (3) to (5) and (8), a person commits an offence—
- (a) if—
 - (i) the person removes an organ, part of an organ, or any tissue from the body of a living child intending that it be used for transplantation; and
 - (ii) when the person removes the organ, part or tissue, the person knows, or might reasonably be expected to know, that the other person from whose body the person removes it is a living child;
 - (b) if—
 - (i) the person removes an organ or part of an organ from the body of a living adult intending that it be used for transplantation; and
 - (ii) when the person removes the organ or part, the person knows, or might reasonably be expected to know, that the adult from whose body the person removes it is alive; or
 - (c) if—
 - (i) the person removes any tissue from the body of a living adult with incapacity intending that it be used for transplantation; and
 - (ii) when the person removes the tissue the person knows, or might reasonably be expected to know, that the adult from whose body the person removes it is alive and an adult with incapacity.
- (2) Subject to subsections (3) to (5) and (8), a person commits an offence—
- (a) if—
 - (i) the person uses for transplantation an organ, part of an organ or any tissue which has come from the body of a living child; and
 - (ii) when the person does so, the person knows, or might reasonably be expected to know, that it has come from the body of a living child;
 - (b) if—
 - (i) the person uses for transplantation an organ or part of an organ which has come from the body of a living adult; and
 - (ii) when the person does so, the person knows, or might reasonably be expected to know, that it has come from the body of a living adult; or

- (c) if—
 - (i) the person uses for transplantation any tissue which has come from the body of a living adult with incapacity; and
 - (ii) when the person does so, the person knows, or might reasonably be expected to know, that it has come from the body of a living adult with incapacity.
- (3) The Scottish Ministers may by regulations provide that subsection (1)(b) or (2)(b) does not apply in a case where—
 - (a) the Ministers are satisfied that—
 - (i) no reward has been or is to be given in contravention of section 20; and
 - (ii) such other conditions as may be specified in the regulations are satisfied; and
 - (b) such other requirements as may be specified in the regulations are complied with.
- (4) The Scottish Ministers may by regulations provide that subsection (1)(a) or (c) or (2)(a) or (c) does not apply in a case where—
 - (a) a person—
 - (i) removes regenerative tissue; or
 - (ii) uses such tissue;
 - (b) the Ministers are satisfied that—
 - (i) no reward has been or is to be given in contravention of section 20;
 - (ii) such other conditions, as may be specified in the regulations are satisfied; and
 - (c) such other requirements as may be specified in the regulations are complied with.
- (5) The Scottish Ministers may by regulations provide that subsection (1)(a) or (b) or (2)(a) or (b) does not apply in a case where—
 - (a) a person—
 - (i) removes an organ or part of an organ as described in subsection (6); or
 - (ii) uses such an organ or part so removed;
 - (b) the Ministers are satisfied that—
 - (i) no reward has been or is to be given in contravention of section 20;
 - (ii) such other conditions, as may be specified in the regulations are satisfied; and
 - (c) such other requirements as may be specified in the regulations are complied with.
- (6) The organ or part of an organ is one that—
 - (a) during a domino organ transplant operation, is necessarily removed from—
 - (i) a child; or
 - (ii) an adult with incapacity; and
 - (b) is in turn intended to be used for transplantation in respect of another living person.

(7) Regulations under subsection (3), (4) or (5) must include provision as to appeals against decisions made in relation to matters which fall to be decided under the regulations.

(8) Where under—

- (a) subsection (3) an exception from subsection (1)(b) or (2)(b) is in force, a person does not commit an offence under subsection (1)(b) or, as the case may be, (2)(b) if the person reasonably believes that the exception applies;
- (b) subsection (4) an exception from subsection (1)(a) or (c) or (2)(a) or (c) is in force, a person does not commit an offence under subsection (1)(a) or (c) or (2)(a) or (c), as the case may be, if the person reasonably believes that the exception applies;
- (c) subsection (5) an exception from subsection (1)(a) or (b) or (2)(a) or (b) is in force, a person does not commit an offence under subsection (1)(a) or (b) or (2)(a) or (b), as the case may be, if the person reasonably believes that the exception applies.

(9) A person guilty of an offence under this section is liable on summary conviction to—

- (a) imprisonment for a term not exceeding 12 months;
- (b) a fine not exceeding level 5 on the standard scale; or
- (c) both.

(10) In this section—

“adult with incapacity” is—

- (a) for the purposes of subsections (1)(c) and (2)(c), an adult to whom section 18 applies;
- (b) for the purposes of subsection (6)(a)(ii), an adult in respect of whom section 47 of the Adults with Incapacity (Scotland) Act 2000 (asp 4) applies in relation to the domino organ transplant operation in question;

“domino organ transplant operation” means a transplant operation performed on a living person by a registered medical practitioner—

- (a) which is designed to safeguard or promote the physical health of the person by transplanting organs or parts of organs into the person; and
- (b) by so doing, necessitates the removal of an organ or part of an organ from the person which in turn is intended to be used for transplantation in respect of another living person;

“regenerative tissue” means tissue which is able to be replaced in the body of a living person by natural processes if the tissue is injured or removed;

“reward” means any description of financial or other material advantage, but does not include any payment in money or money’s worth for defraying or reimbursing—

- (a) the cost of removing, transporting, preparing, preserving or storing the organ (or part) or tissue;
- (b) any liability incurred in respect of expenses incurred by a third party in, or in connection with, any of the activities referred to in paragraph (a);
- (c) any expenses or loss of earnings incurred by the person from whose body the organ (or part) or tissue comes so far as reasonably and directly attributable to the person’s supplying it from the person’s body.

18 Meaning of adult with incapacity for purposes of section 17(1)(c) and (2)(c)

- (1) This section applies to an adult—
 - (a) who, in the opinion of the Scottish Ministers, is an adult who is incapable in relation to a decision about the removal from the adult of regenerative tissue for transplantation; and
 - (b) in respect of whom a certificate has been issued by the Ministers in accordance with subsection (2) that they are of this opinion.
- (2) A certificate for the purposes of subsection (1) is to be in a form prescribed in regulations by the Scottish Ministers and is to specify the period during which the certificate is in force, being a period which—
 - (a) the Scottish Ministers consider appropriate to the condition or circumstances of the adult; but
 - (b) does not exceed one year from the date of the certificate.
- (3) In this section, “incapable” has the same meaning as it has in section 1(6) of the Adults with Incapacity (Scotland) Act 2000.

Records, information etc.: removal and use of parts of human bodies for transplantation etc.

19 Records, information etc.: removal and use of parts of human bodies for transplantation etc.

- (1) The Scottish Ministers may by regulations make provision requiring such persons (or descriptions of persons) as may be specified in the regulations to—
 - (a) maintain in accordance with the regulations records in connection with the removal of parts from human bodies for transplantation and the use or retention, for any other purpose referred to in section 3(1), of parts removed from bodies of deceased or living persons;
 - (b) provide to the Scottish Ministers, or to such authority as may be specified in the regulations, such information as may be so specified with respect to the removal of parts from human bodies for transplantation, the use or retention for that purpose of parts removed or the use or retention for any other purpose referred to in section 3(1) of parts removed from bodies of deceased or living persons.
- (2) The Scottish Ministers must keep a record of information provided to them in pursuance of regulations made under subsection (1).
- (3) Any such authority as may be specified in such regulations must keep a record of information provided to it in pursuance of the regulations.
- (4) A person commits an offence if—
 - (a) the person fails without reasonable excuse to comply with regulations under subsection (1); or
 - (b) in purported compliance with such regulations, the person knowingly or recklessly supplies information which is false or misleading in a material respect.
- (5) A person guilty of an offence under—
 - (a) subsection (4)(a) is liable on summary conviction to a fine not exceeding level 3 on the standard scale;

- (b) subsection (4)(b) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Trafficking

20 Prohibition of commercial dealings in parts of a human body for transplantation

- (1) A person commits an offence if the person—
 - (a) gives or receives a reward for the supply of, or for an offer to supply, any part of a human body for transplantation;
 - (b) seeks to find a person willing to supply any part of a human body for transplantation for reward;
 - (c) offers to supply any part of a human body for transplantation for reward;
 - (d) initiates or negotiates an arrangement involving the giving of a reward for the supply of, or for an offer to supply, any part of a human body for transplantation;
 - (e) takes part in the management or control of a body corporate or a group of persons whose activities consist of or include the initiation or negotiation of such arrangements.
- (2) Without prejudice to subsection (1)(b) and (c), a person commits an offence if the person causes to be published or distributed, or knowingly publishes or distributes, an advertisement—
 - (a) inviting persons to supply, or offering to supply, any part of a human body for transplantation for reward; or
 - (b) indicating that the advertiser is willing to initiate or negotiate an arrangement referred to in subsection (1)(d).
- (3) A person who engages in an activity to which subsection (1) or (2) applies does not commit an offence under that subsection if the person is designated by the Scottish Ministers for the purposes of this subsection as a person who may lawfully engage in the activity.
- (4) A person guilty of an offence under subsection (1) is liable—
 - (a) on summary conviction, to—
 - (i) imprisonment for a term not exceeding 12 months;
 - (ii) a fine not exceeding the statutory maximum; or
 - (iii) both;
 - (b) on conviction on indictment, to—
 - (i) imprisonment for a term not exceeding 3 years;
 - (ii) a fine; or
 - (iii) both.
- (5) A person guilty of an offence under subsection (2) is liable on summary conviction to—
 - (a) imprisonment for a term not exceeding 12 months;
 - (b) a fine not exceeding level 5 on the standard scale; or
 - (c) both.
- (6) In this section—

“advertisement” includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons;

“reward” has the same meaning as in section 17.

Summary proceedings for offences under section 17, 19(4) or 20(2)

21 Summary proceedings for offences under section 17, 19(4) or 20(2)

- (1) Summary proceedings in pursuance of section 17, 19(4) or 20(2) may be commenced at any time within the period of 6 months from the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to the Lord Advocate’s knowledge.
- (2) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date of commencement of summary proceedings) has effect for the purposes of subsection (1) as it has effect for the purposes of that section.
- (3) For the purposes of subsection (1), a certificate of the Lord Advocate as to the date on which the evidence in question came to the Lord Advocate’s knowledge is conclusive evidence of the date on which it did so.

Authorisation for transplantation to have priority

22 Authorisation by virtue of Part 1 for transplantation to have priority

- (1) If there is in force immediately before an adult’s death authorisation by the adult by virtue of section 6(1) of removal and use of any part of the adult’s body for transplantation, the authorisation takes priority as respects the part over—
 - (a) any authorisation by the adult by virtue of section 29(1), or any request by the adult by virtue of section 4(1) of the Anatomy Act 1984 (c. 14) (“the 1984 Act”), which is also in force at that time;
 - (b) any right of any other person to give authorisation as respects the deceased adult by virtue of section 30(1) or (2).
- (2) If there is in force immediately before the death of a child who died twelve years of age or over authorisation by the child by virtue of section 8(1) of removal and use of a part of the child’s body for transplantation, the authorisation takes priority as respects the part over—
 - (a) any authorisation by the child by virtue of section 31(1), or any request by the child by virtue of section 4(1) of the 1984 Act, which is also in force at that time;
 - (b) any right of any other person to give authorisation as respects the deceased child by virtue of section 32(1) or (2).
- (3) Any right of any other person to authorise, by virtue of section 7(1), (2) or (3), removal and use of a part of a deceased adult’s body for transplantation takes priority as respects the part over—
 - (a) any authorisation by the adult by virtue of section 29(1), or any request by the adult by virtue of section 4(1) of the 1984 Act, which is in force immediately before the adult’s death;

- (b) any right of any other person to give authorisation as respects the deceased adult by virtue of section 30(1) or (2).
- (4) Any right of any other person to authorise, by virtue of section 9(1), (2) or (3) or 10(1) removal and use of a part of a deceased child's body for transplantation takes priority as respects the part over—
 - (a) any authorisation by the child by virtue of section 31(1), or any request by the child by virtue of section 4(1) of the 1984 Act, which is in force immediately before the child's death;
 - (b) any right of another person to give authorisation as respects the deceased child by virtue of section 32(1) or (2).