

# Human Tissue (Scotland) Act 2006

2006 asp 4

---

Explanatory Notes have been produced to assist in the  
understanding of this Act and are available separately

---

**£9.00**



# Human Tissue (Scotland) Act 2006

## 2006 asp 4

### CONTENTS

Section

#### PART 1

##### TRANSPLANTATION ETC.

###### *General functions of the Scottish Ministers*

- 1 Duties of the Scottish Ministers as respects transplantation, donation of body parts etc.
- 2 Assistance and support

###### *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.
- 4 Disapplication of sections 3, 6 to 11 and 16 in certain circumstances
- 5 Consent by procurator fiscal to removal of part of body
- 6 Authorisation: adult
- 7 Authorisation by adult's nearest relative
- 8 Authorisation: child 12 years of age or over
- 9 Authorisation as respects child who dies 12 years of age or over by person with parental rights and responsibilities
- 10 Authorisation as respects child who dies under 12 years of age
- 11 Removal of part of body of deceased person: further requirements
- 12 Removal of tissue sample to determine viability of transplantation
- 13 Preservation for transplantation
- 14 Part of body removed before day on which section 3 comes into force
- 15 Existing request by adult not acted on before commencement of sections 3 and 6
- 16 Offences: removal or use of part of body of deceased person for transplantation, research etc.

###### *Restrictions on transplants involving live donor*

- 17 Restrictions on transplants involving live donor
- 18 Meaning of adult with incapacity for purposes of section 17(1)(c) and (2)(c)

###### *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.

*Trafficking*

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

*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)

*Authorisation for transplantation to have priority*

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

**PART 2**

## POST-MORTEM EXAMINATIONS

- 23 Meaning of post-mortem examination for purposes of Act  
 24 Disapplication of sections 23 and 27 to 37 as respects procurator fiscal  
 25 Disapplication of sections 27 to 35 and 37: bodies of persons dead for at least 100 years  
 26 Consent by procurator fiscal to post-mortem examination  
 27 Requirements for carrying out post-mortem examination  
 28 Removal during examination and retention of organs and other parts of a body  
 29 Authorisation of post-mortem examination etc.: adult  
 30 Authorisation of post-mortem examination etc. by adult's nominee or nearest relative  
 31 Authorisation of post-mortem examination etc.: child 12 years of age or over  
 32 Authorisation of post-mortem examination etc. as respects child 12 years of age or over by nominee or person with parental rights and parental responsibilities  
 33 Authorisation of post-mortem examination etc. as respects child under 12 years of age  
 34 Nomination of person under section 30(1) or 32(1): additional provision  
 35 Post-mortem examination and removal and retention of organs: further requirements  
 36 Organ or tissue sample removed before day on which section 27 comes into force  
 37 Offences: post-mortem examinations

**PART 3**

## TISSUE SAMPLE OR ORGANS NO LONGER REQUIRED FOR PROCURATOR FISCAL PURPOSES

- 38 Tissue sample becoming part of medical records of deceased person  
 39 Use of tissue sample which has become part of deceased's medical records  
 40 Use of organ no longer required for procurator fiscal purposes  
 41 Notice under section 38(2) or 40(2)(a): further provision  
 42 Authorisation of use etc. after examination: adult  
 43 Authorisation of use etc. after examination: adult's nearest relative  
 44 Authorisation of use etc. after examination: child 12 years of age or over  
 45 Authorisation of use etc. after examination: person with parental rights and parental responsibilities for child 12 years of age or over  
 46 Authorisation of use etc. after examination: person with parental rights and responsibilities for child under 12 years of age  
 47 Use of tissue sample removed before day on which section 38 comes into force  
 48 Use of organ removed before day on which section 40 comes into force

**PART 4**

## PARTS 1 TO 3: SUPPLEMENTARY PROVISION

- 49 Conditions attached to authorisation  
 50 Nearest relative

- 51 Witnesses: additional provision
- 52 Power to prescribe forms and descriptions of persons who may act as a witness

**PART 5**

AMENDMENT OF THE ANATOMY ACT 1984

- 53 Amendment of the Anatomy Act 1984

**PART 6**

MISCELLANEOUS

- 54 Arrangements by the Scottish Ministers for assistance with functions under section 1, 2, 17(3), (4) or (5), 18, 19(2) or 20(3)
- 55 Power to give effect to Community obligations
- 56 Bodies corporate etc.
- 57 Amendment of the Adults with Incapacity (Scotland) Act 2000

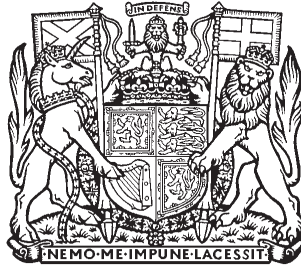
**PART 7**

GENERAL

- 58 Ancillary provision
- 59 Regulations or orders
- 60 Interpretation
- 61 Repeals
- 62 Short title and commencement

---

Schedule—Repeals



# Human Tissue (Scotland) Act 2006

## 2006 asp 4

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 2nd February 2006 and received Royal Assent on 16th March 2006**

An Act of the Scottish Parliament to make provision in relation to activities involving human tissue.

### 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;
- (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).

## **PART 2**

### POST-MORTEM EXAMINATIONS

#### **23 Meaning of post-mortem examination for purposes of Act**

In this Act, “post-mortem examination” means examination of the body of a deceased person involving its dissection and the removal of organs, tissue sample, blood (or any material derived from blood) or other body fluid which is carried out for any or all of the following purposes—

- (a) providing information about or confirming the cause of death;
- (b) investigating the effect and efficacy of any medical or surgical intervention carried out on the person;
- (c) obtaining information which may be relevant to the health of any other person (including a future person);
- (d) audit, education, training or research.

#### **24 Disapplication of sections 23 and 27 to 37 as respects procurator fiscal**

Sections 23 and 27 to 37 do not apply to anything done for the purposes of the functions or under the authority of the procurator fiscal.

#### **25 Disapplication of sections 27 to 35 and 37: bodies of persons dead for at least 100 years**

Sections 27 to 35 and 37 do not apply as respects a post-mortem examination of a body of a deceased person if it is the body of a person who died before the day on which section 27 comes into force and at least 100 years have elapsed since the date of the person's death.

#### **26 Consent by procurator fiscal to post-mortem examination**

- (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, carry out a post-mortem examination of the body.
- (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.

#### **27 Requirements for carrying out post-mortem examination**

A post-mortem examination may be carried out only if—



- (a) it is authorised in accordance with section 29, 30, 31, 32 or, as the case may be 33; and
- (b) the requirements of section 35 are satisfied.

**28 Removal during examination and retention of organs and other parts of a body**

- (1) Subject to section 26 and subsection (2), any part of the body of a deceased person mentioned in subsection (5) may, by virtue of the authorisation for the post-mortem examination of the body, be—
  - (a) removed from the body during the post-mortem examination for the purposes of the examination;
  - (b) retained and used thereafter for any of those purposes.
- (2) An organ may be—
  - (a) removed, for the purposes of audit, education, training or research, from the body of a deceased person during a post-mortem examination of the body only if the removal for the purpose in question;
  - (b) retained and used thereafter for any of those purposes only if the retention for the purpose in question,  
is authorised in accordance with section 29, 30, 31, 32 or, as the case may be, 33.
- (3) Any part of the body of a deceased person (other than an organ) which is removed from the body during the post-mortem examination by virtue of the authorisation referred to in subsection (1) forms part of the medical records of the deceased person.
- (4) Where an organ is removed from the body of a deceased person during the post-mortem examination of the body (whether by virtue of the authorisation referred to in subsection (1) or (2)), samples—
  - (a) may, by virtue of the authorisation, be taken from the organ; and
  - (b) if taken, form part of the medical records of the deceased person.
- (5) The parts of the body referred to in subsection (1) are—
  - (a) an organ;
  - (b) tissue sample;
  - (c) blood, or any material derived from blood;
  - (d) other body fluid.
- (6) A part of the body of a deceased person which is not mentioned in subsection (5) may not be removed from the body during a post-mortem examination of the body.

**29 Authorisation of post-mortem examination etc.: adult**

- (1) An adult may authorise—
  - (a) a post-mortem examination of the adult's body after the adult's death;
  - (b) the removal from the body during the post-mortem examination of an organ for one or more of the purposes referred to in section 28(2)(a);
  - (c) the retention and use of an organ after the post-mortem examination for one or more of such purposes.

- (2) Authorisation by virtue of subsection (1) must be either—
  - (a) in writing and signed by the adult; or
  - (b) expressed verbally in the presence of 2 witnesses.
- (3) Authorisation by virtue of subsection (1) which is—
  - (a) in writing and signed may be withdrawn in writing signed by the adult;
  - (b) expressed verbally in the presence of 2 witnesses may be withdrawn—
    - (i) in writing signed by the adult; or
    - (ii) verbally by the adult in the presence of 2 witnesses.
- (4) If the adult is blind or unable to write, withdrawal of authorisation by virtue of subsection (3)(a) 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.
- (5) Withdrawal of authorisation which is signed by a signatory on behalf of an adult by virtue of subsection (4) 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.
- (6) Nothing in subsection (4) prevents an adult who is blind from withdrawing, in accordance with subsection (3)(a), any authorisation by virtue of subsection (1).

**30 Authorisation of post-mortem examination etc. by adult’s nominee or nearest relative**

- (1) An adult may nominate one or more persons to represent the adult after the adult’s death as respects authorising in relation to the deceased adult one or more of the matters referred to in section 29(1).
- (2) The nearest relative of a deceased adult may authorise one or more of the matters referred to in that section in relation to the deceased adult if there is in force immediately before the adult’s death no authorisation by the adult by virtue of that section of any of the matters referred to in it and no nomination by the adult in accordance with subsection (1).
- (3) Where an adult has nominated a person by virtue of subsection (1), the nomination is to be disregarded if—
  - (a) no one is able to give authorisation under it; or
  - (b) it is not reasonably practicable to communicate with the person in the time available,and where the nomination falls under this subsection to be disregarded, subsection (2) applies as if there were in force immediately before the adult’s death no such nomination by the adult.
- (4) Authorisation by a person nominated by virtue of subsection (1) must be in writing signed by the person and witnessed by one witness (who must not be so nominated).
- (5) Authorisation by virtue of subsection (2) must be in writing signed by the nearest relative and witnessed by one witness.
- (6) Authorisation—

- (a) by a person nominated by virtue of subsection (1);
- (b) by virtue of subsection (2),

must state that the person giving the authorisation has no actual knowledge that the adult was unwilling for a post-mortem examination to be carried out and, where the authorisation is of an activity referred to in section 29(1)(b) or (c), for the activity in question to be carried out (for the purpose in question).

- (7) Authorisation by a person nominated by virtue of subsection (1) may be withdrawn in writing signed by the person and witnessed by one witness (who must not be so nominated).
- (8) Authorisation by virtue of subsection (2) may be withdrawn in writing signed by the person and witnessed by one witness.

### **31 Authorisation of post-mortem examination etc.: child 12 years of age or over**

- (1) A child who is 12 years of age or over may authorise—
  - (a) a post-mortem examination of the deceased child’s body after the child’s death;
  - (b) the removal from the body during the post-mortem examination of an organ for one or more of the purposes referred to in section 28(2)(a);
  - (c) the retention and use of an organ after the post-mortem examination for one or more of such purposes.
- (2) Authorisation by virtue of subsection (1)—
  - (a) must be in writing—
    - (i) signed by the child and witnessed by 2 witnesses; or
    - (ii) subject to subsections (3) and (4), if the child is blind or unable to write signed by an adult (a “signatory”) on the child’s behalf and witnessed by one witness;
  - (b) may be withdrawn in writing—
    - (i) signed by the child; or
    - (ii) subject to subsections (3) and (4), if the child is blind or unable to write signed by an adult (a “signatory”) on the child’s behalf and witnessed by one witness.
- (3) Authorisation by virtue of subsection (1), or withdrawal of such authorisation, which is signed by a signatory on behalf of the child by virtue of subsection (2)(a)(ii) or (b)(ii) 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.
- (4) Authorisation by virtue of subsection (1) which is signed by a signatory on behalf of a child by virtue of subsection (2)(a)(ii) must contain or be accompanied by certification in writing signed by the signatory that, in the opinion of the signatory, the child understands the effect of the authorisation and is not acting under undue influence in giving it.

- (5) Nothing in subsection (2)(a)(ii) or (b)(ii) prevents a child who is blind from signing an authorisation by virtue of subsection (1) in accordance with subsection (2)(a)(i) or a withdrawal of authorisation in accordance with subsection (2)(b)(i).
- (6) Each witness to authorisation by a child by virtue of subsection (1) (whether it is signed by the child or by a signatory on behalf of the child), must at the time of witnessing certify (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.

**32 Authorisation of post-mortem examination etc. as respects child 12 years of age or over by nominee or person with parental rights and parental responsibilities**

- (1) A child who is 12 years of age or over may nominate one or more persons to represent the child after the child's death as respects authorising in relation to the deceased child one or more of the matters referred to in section 31(1).
- (2) A person who immediately before the death of a child who died 12 years of age or over had parental rights and parental responsibilities in relation to the child (but who is not a local authority) may authorise one or more of the matters referred to in that section in relation to the deceased child if there is in force immediately before the death no authorisation by the child by virtue of that section of any of the matters referred to in it and no nomination by the child in accordance with subsection (1).
- (3) Where a child who died 12 years of age or over has nominated a person by virtue of subsection (1), the nomination is to be disregarded if—
  - (a) no one is able to give authorisation under it; or
  - (b) it is not reasonably practicable to communicate with the person in the time available,

and where the nomination falls under this subsection to be disregarded, subsection (2) applies as if there were in force immediately before the child's death no such nomination by the child.

- (4) Authorisation by a person nominated by virtue of subsection (1) must be in writing signed by the person and witnessed by 2 witnesses (who must not be so nominated).
- (5) Authorisation by virtue of subsection (2) must be in writing signed by the person who gives the authorisation in accordance with that subsection and witnessed by 2 witnesses.
- (6) Authorisation—
  - (a) by a person nominated by virtue of subsection (1);
  - (b) by virtue of subsection (2),

must state that the person giving the authorisation has no actual knowledge that the child was unwilling for a post-mortem examination to be carried out and, where the authorisation is of an activity referred to in section 31(1)(b) or (c), for the activity in question to be carried out (for the purpose in question).

- (7) Authorisation by a person nominated in accordance with subsection (1) may be withdrawn in writing signed by the person and witnessed by 2 witnesses (who must not be so nominated).
- (8) Authorisation by virtue of subsection (2) may be withdrawn in writing signed by the person who gave the authorisation in accordance with that subsection and witnessed by 2 witnesses.

**33 Authorisation of post-mortem examination etc. as respects child 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 one or more of the matters referred to in section 31(1) as respects the deceased child.
- (2) Authorisation by virtue of subsection (1)—
  - (a) must be in writing signed by the person who gives the authorisation in accordance with that subsection and witnessed by 2 witnesses;
  - (b) may be withdrawn in writing so signed and witnessed by one witness.

**34 Nomination of person under section 30(1) or 32(1): additional provision**

- (1) Nomination by virtue of—
  - (a) section 30(1)—
    - (i) must be in writing signed by the adult;
    - (ii) may be withdrawn in writing signed by the adult, in the presence of one witness (who is not so nominated);
  - (b) section 32(1)—
    - (i) must be in writing signed by the child;
    - (ii) may be withdrawn in writing signed by the child, in the presence of one witness (who is not so nominated).
- (2) A witness to nomination by an adult by virtue of section 30(1) or by a child by virtue of section 32(1) must at the time of witnessing certify (in writing signed by the witness) that, in the opinion of the witness, the adult or, as the case may be, the child understands the effect of the nomination and is not acting under undue influence in giving it.
- (3) A person nominated by virtue of section 30(1) or 32(1)—
  - (a) may not act under the nomination if not an adult;
  - (b) may renounce the nomination.
- (4) Where more than one person is so nominated, authorisation by virtue of the nomination may be given by any one of them or by all of them acting jointly.

**35 Post-mortem examination and removal and retention of organs: further requirements**

- (1) An activity mentioned in subsection (2) may not be carried out unless the person who proposes to carry it out is satisfied before doing so—
  - (a) that the activity is authorised in accordance with section 29, 30, 31, 32 or, as the case may be, 33; and
  - (b) as respects the carrying out of a post-mortem examination that, if the consent of the procurator fiscal to carrying it out is required by section 26(1), the consent has been given.

- (2) The activities are—
- (a) a post-mortem examination;
  - (b) removal of an organ during the examination for a purpose referred to in section 28(2)(a);
  - (c) retention and use of an organ for such a purpose after removal.
- (3) For the purposes of subsection (1)(a), the person is entitled to be satisfied that the activity is authorised in accordance with the section in question if—
- (a) the person has no reason to believe either that the authorisation was not so given or that it was subsequently withdrawn;
  - (b) in the case of authorisation by virtue of section 29(1) which is in writing, it bears—
    - (i) to be as respects the deceased adult;
    - (ii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);
    - (iii) to be by, and signed by, the adult;
  - (c) in the case of authorisation by virtue of section 29(1) which is expressed verbally, there is what the person 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 the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);
    - (iii) to have been expressed verbally by the adult in the presence of 2 witnesses, each of whom was an adult when witnessing and was present when the other witnessed the authorisation;
  - (d) in the case of authorisation by a nominee by virtue of section 30(1) or authorisation by virtue of section 30(2), it bears—
    - (i) to be in writing;
    - (ii) to be as respects the deceased adult;
    - (iii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);
    - (iv) to be by a nominee or the nearest relative of the deceased adult and signed by the nominee or, as the case may be, the nearest relative;
    - (v) to state that the person who gave the authorisation had when authorising no actual knowledge that the adult was unwilling for a post-mortem examination to be carried out and, where the authorisation bears to be of an activity referred to in subsection (2)(b) or (c), for the activity in question to be carried out (for the purpose in question);
    - (vi) to be witnessed, and signed, by one witness who was an adult when witnessing;



- (vii) if by a nominee by virtue of section 30(1), to state that the nominee was an adult when giving the authorisation;
- (viii) to be in the form prescribed for the time being under section 52(a) for such authorisation;
- (e) in the case of authorisation by virtue of section 31(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 the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);
  - (iv) to be by, and signed by, the child while 12 years of age or over;
  - (v) to be witnessed, and signed, by 2 witnesses each of whom was an adult when witnessing and was present when the other witnessed the authorisation;
  - (vi) to contain or be accompanied by certification in writing by, and signed by, each witness that in the opinion of the witness the child understood the effect of the authorisation and was not acting under undue influence in giving it;
- (f) in the case of authorisation by virtue of section 31(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 the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise 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;
- (g) in the case of authorisation by a nominee by virtue of section 32(1) or authorisation by virtue of section 32(2), it bears—

- (i) to be in writing;
  - (ii) to be as respects the deceased child (who died 12 years of age or over);
  - (iii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);
  - (iv) to be by a nominee of the deceased child or 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 to be signed by the nominee or, as the case may be, the person;
  - (v) to state that the person who gave the authorisation had no actual knowledge that the child was unwilling for a post-mortem examination to be carried out and, where the authorisation bears to be of an activity referred to in subsection (2)(b) or (c), for the activity in question to be carried out (for the purpose in question);
  - (vi) to be witnessed, and signed, by 2 witnesses each of whom was an adult when witnessing and was present when the other witnessed the authorisation;
  - (vii) if by a nominee by virtue of section 32(1), to state that the nominee was an adult when giving the authorisation;
  - (viii) to be in the form prescribed for the time being under section 52(a) for such authorisation;
- (h) in the case of authorisation by virtue of section 33(1), it bears—
- (i) to be in writing;
  - (ii) to be as respects the deceased child (who died under 12 years of age);
  - (iii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);
  - (iv) 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 to be signed by the person;
  - (v) to be witnessed, and signed, by 2 witnesses each of whom was an adult when witnessing and was present when the other witnessed the authorisation;
  - (vi) to be in the form prescribed for the time being under section 52(a) for such authorisation.

### **36 Organ or tissue sample removed before day on which section 27 comes into force**

An organ or tissue sample—

- (a) removed from the body of a deceased person during an examination having the characteristics of a post-mortem examination carried out before the day on which section 27 comes into force; and
- (b) held immediately before that day for use for any purpose referred to in paragraphs (a) to (d) of section 23,



may be retained and used for any such purpose.

**37 Offences: post-mortem examinations**

- (1) A person commits an offence if—
  - (a) the person carries out any of the following activities—
    - (i) a post-mortem examination;
    - (ii) the removal, for a purpose referred to in section 28(2)(a), of an organ during a post-mortem examination;
    - (iii) the retention, for such a purpose, of an organ removed during a post-mortem examination; and
  - (b) the activity is not authorised in accordance with section 29, 30, 31, 32 or, as the case may be, 33.
- (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 activity was authorised in accordance with section 29, 30, 31, 32 or, as the case may be, 33.
- (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.

**PART 3**

**TISSUE SAMPLE OR ORGANS NO LONGER REQUIRED FOR PROCURATOR FISCAL PURPOSES**

**38 Tissue sample becoming part of medical records of deceased person**

- (1) This section applies to tissue sample removed from the body of a deceased person (or from an organ which was removed from the body) during an examination of the body carried out on or after the day on which this section comes into force for the purposes of the functions, or under the authority, of the procurator fiscal.
- (2) If the manager of the establishment in which an examination referred to in subsection (1) was carried out receives notice in writing from the procurator fiscal that tissue sample specified in the notice and removed from the body of a deceased person so specified is no longer required for the purposes of the functions of the procurator fiscal, on the date of the notice the tissue sample becomes, and accordingly falls to be retained as, part of the medical records of the deceased person.

**39 Use of tissue sample which has become part of deceased's medical records**

Where, by virtue of notice under section 38(2), tissue sample becomes part of the medical records of a deceased person, it may—

- (a) be used for the purposes of—
  - (i) providing information about or confirming the cause of death;
  - (ii) investigating the effect and efficacy of any medical or surgical intervention carried out on the person;
  - (iii) obtaining information which may be relevant to the health of any other person (including a future person);
  - (iv) audit;
- (b) be used for the purposes of education, training or research, if use for the purpose in question is authorised in accordance with section 42, 43, 44, 45 or, as the case may be, 46.

**40 Use of organ no longer required for procurator fiscal purposes**

- (1) This section applies to an organ removed from the body of a deceased person during an examination of the body carried out on or after the day on which this section comes into force for the purposes of the functions, or under the authority, of the procurator fiscal.
- (2) The organ may be retained and used for the purposes of education, training or research if—
  - (a) the manager of the establishment in which an examination referred to in subsection (1) was carried out receives notice in writing from the procurator fiscal that an organ specified in the notice and removed from the body of a deceased person so specified is no longer required for the purposes of the functions of the procurator fiscal;
  - (b) the subsequent use of the organ for the purpose in question is authorised in accordance with section 42, 43, 44, 45 or, as the case may be, 46; and
  - (c) where the purpose in question is research, the research is approved in writing by such person (or persons), or group (or groups) of persons, as the Scottish Ministers may specify by order under this subsection.

**41 Notice under section 38(2) or 40(2)(a): further provision**

- (1) Notice under section 38(2) or 40(2)(a)—
  - (a) may be—
    - (i) delivered;
    - (ii) posted;
    - (iii) transmitted by electronic means;
  - (b) if—
    - (i) posted is presumed to be received on the 3rd day after the day of posting;
    - (ii) transmitted by electronic means is presumed to be received on the day of transmission.

- (2) For the purposes of sections 38(2) and 40(2)(a), the manager of an establishment which is—
- (a) a health service hospital, is the Health Board responsible for the administration of the hospital;
  - (b) a university or any other establishment, is the person or holder of such post as the Scottish Ministers may specify by order under this subsection.
- (3) In subsection (2)(a)—
- “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.

#### **42 Authorisation of use etc. after examination: adult**

- (1) An adult may authorise—
- (a) use of tissue sample removed from the adult’s body after the adult’s death during an examination of the body for the purposes of the functions, or under the authority, of the procurator fiscal;
  - (b) retention and use of an organ removed from the adult’s body after the adult’s death during such an examination,
- for one or more of the purposes referred to in section 39(b).
- (2) Authorisation by virtue of subsection (1)—
- (a) must be in writing and—
    - (i) signed by the adult; or
    - (ii) subject to subsection (4), if the adult is blind or unable to write signed by another adult (a “signatory”) on the adult’s behalf and witnessed by one witness;
  - (b) may be withdrawn in writing—
    - (i) signed by the adult; or
    - (ii) subject to subsection (4), if the adult is blind or unable to write signed by another adult (a “signatory”) on the adult’s behalf and witnessed by one witness.
- (3) Authorisation by virtue of subsection (1), or withdrawal of such authorisation, which is signed by a signatory on behalf of the adult by virtue of subsection (2)(a)(ii) or (b)(ii) 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 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 adult.
- (4) Nothing in subsection (2)(a)(ii) or (b)(ii) prevents an adult who is blind from signing an authorisation by virtue of subsection (1) in accordance with subsection (2)(a)(i) or a withdrawal of authorisation in accordance with subsection (2)(b)(i).

**43 Authorisation of use etc. after examination: adult's nearest relative**

- (1) The nearest relative of a deceased adult may authorise one or more of the matters referred to in section 42(1) in relation to the deceased adult if there is in force immediately before the adult's death no authorisation by the adult by virtue of that section of any of the matters referred to in it.
- (2) Authorisation by virtue of subsection (1) must—
  - (a) be in writing signed by the nearest relative and witnessed by one witness;
  - (b) state that the person giving the authorisation has no actual knowledge that the adult was unwilling for the matter in question to be authorised (for the purpose in question).
- (3) Authorisation by virtue of subsection (1) may be withdrawn in writing signed by the nearest relative and witnessed by one witness.

**44 Authorisation of use etc. after examination: child 12 years of age or over**

- (1) A child who is 12 years of age or over may authorise—
  - (a) use of tissue sample removed from the child's body after the child's death during an examination of the body for the purposes of the functions, or under the authority, of the procurator fiscal;
  - (b) retention and use of an organ removed from the child's body after the child's death during such an examination,for one or more of the purposes referred to in section 39(b).
- (2) Authorisation by virtue of subsection (1)—
  - (a) must be in writing—
    - (i) signed by the child and witnessed by 2 witnesses; or
    - (ii) subject to subsections (3) and (4), if the child is blind or unable to write signed by an adult (a "signatory") on the child's behalf and witnessed by one witness;
  - (b) may be withdrawn in writing—
    - (i) signed by the child; or
    - (ii) subject to subsections (3) and (4), if the child is blind or unable to write signed by an adult (a "signatory") on the child's behalf and witnessed by one witness.
- (3) Authorisation by virtue of subsection (1), or withdrawal of such authorisation, which is signed by a signatory on behalf of the child by virtue of subsection (2)(a)(ii) or (b)(ii) 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.

- (4) Authorisation by virtue of subsection (1) which is signed by a signatory on behalf of a child by virtue of subsection (2)(a)(ii) must contain or be accompanied by certification in writing signed by the signatory that, in the opinion of the signatory, the child understands the effect of the authorisation and is not acting under undue influence in giving it.
- (5) Nothing in subsection (2)(a)(ii) or (b)(ii) prevents a child who is blind from signing an authorisation by virtue of subsection (1) in accordance with subsection (2)(a)(i) or a withdrawal of authorisation in accordance with subsection (2)(b)(i).
- (6) Each witness to authorisation by a child by virtue of subsection (1) (whether it is signed by the child or by a signatory on behalf of the child), must at the time of witnessing certify (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.

**45 Authorisation of use etc. after examination: person with parental rights and parental responsibilities for child 12 years of age or over**

- (1) A person who immediately before the death of a child who died 12 years of age or over had parental rights and parental responsibilities in relation to the child (but who is not a local authority) may authorise one or more of the matters referred to in section 44(1) in relation to the deceased child if there is in force immediately before the death no authorisation by the child by virtue of that section of any of the matters referred to in it.
- (2) Authorisation by virtue of subsection (1) must—
  - (a) be in writing signed by the person who gives the authorisation in accordance with that subsection and witnessed by 2 witnesses;
  - (b) state that the person giving the authorisation has no actual knowledge that the child was unwilling for the matter in question to be authorised (for the purpose in question).
- (3) Authorisation by virtue of subsection (1) may be withdrawn in writing signed by the person who gave the authorisation in accordance with that subsection and witnessed by 2 witnesses.

**46 Authorisation of use etc. after examination: person with parental rights and responsibilities for child 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 one or more of the matters referred to in section 44(1) as respects the deceased child.
- (2) Authorisation by virtue of subsection (1)—
  - (a) must be in writing signed by the person who gives the authorisation in accordance with that subsection and witnessed by 2 witnesses;
  - (b) may be withdrawn in writing so signed and witnessed by one witness.

**47 Use of tissue sample removed before day on which section 38 comes into force**

Tissue sample removed from the body of a deceased person (or from an organ which was removed from the body) during an examination of the body carried out before the day on which section 38 comes into force for the purposes of the functions, or under the authority, of the procurator fiscal and held immediately before that day for use for any of the purposes referred to in paragraph (b) of section 39 (whether or not held immediately before that day also for the purposes of the functions of the procurator fiscal) may be retained and used for any of the purposes referred to in that paragraph (whether or not it is retained and used also for the purposes of the functions of the procurator fiscal).

**48 Use of organ removed before day on which section 40 comes into force**

- (1) An organ removed from the body of a deceased person during an examination of the body carried out before the day on which section 40 comes into force for the purposes of the functions, or under the authority, of the procurator fiscal and held immediately before that day for use for the purposes of existing approved research (whether or not held immediately before that day also for the purposes of the functions of the procurator fiscal) may be retained and used for the purposes of the existing approved research or for the purposes of education, training or new approved research (whether or not it is retained and used also for the purposes of the functions of the procurator fiscal).
- (2) In subsection (1)—
  - (a) “existing approved research” means research approved before the day on which section 40 comes into force;
  - (b) “new approved research” means research approved on or after that day,
 by such persons (or persons), or group (or groups) of persons, as the Scottish Ministers may specify by order under this section.

**PART 4**

PARTS 1 TO 3: SUPPLEMENTARY PROVISION

**49 Conditions attached to authorisation**

- (1) Authorisation—
  - (a) by virtue of section 7(1), 9(1) or 10(1) of removal and use of a part of a body for a purpose referred to in section 3(1)(b) to (d);
  - (b) by a person nominated by virtue of section 30(1) of a matter referred to in section 29(1);
  - (c) by virtue of section 30(2) of a matter referred to in section 29(1);
  - (d) by a person nominated by virtue of section 32(1) of a matter referred to in section 31(1);
  - (e) by virtue of section 32(2) or 33(1) of a matter referred to in section 31(1);
  - (f) by virtue of section 43(1) of a matter referred to in section 42(1);
  - (g) by virtue of section 45(1) or 46(1) of a matter referred to in section 44(1),

may be accompanied by a request that the matter authorised is to be carried out subject to conditions specified in the authorisation.

- (2) Where a request is made by virtue of subsection (1), the matter must be carried out (in so far as it is reasonably practicable to do so) in accordance with the conditions.

## **50 Nearest relative**

- (1) For the purposes of sections 7 and 30, the nearest relative is the person who immediately before the adult's death was—
- (a) the adult's spouse or civil partner;
  - (b) living with the adult as husband or wife or in a relationship which had the characteristics of the relationship between civil partners and had been so living for a period of not less than 6 months (or if the adult was in hospital immediately before death had been so living for such period when the adult was admitted to hospital);
  - (c) the adult's child;
  - (d) the adult's parent;
  - (e) the adult's brother or sister;
  - (f) the adult's grandparent;
  - (g) the adult's grandchild;
  - (h) the adult's uncle or aunt;
  - (i) the adult's cousin;
  - (j) the adult's niece or nephew;
  - (k) a friend of longstanding of the adult.
- (2) Subsection (1) applies for the purposes of section 43 as it applies for the purposes of sections 7 and 30 as if after paragraph (k) of that subsection there were inserted (in an additional paragraph) an additional category of person, namely "a person who had a longstanding professional relationship with the adult"; and accordingly references to subsection (1) in subsections (4) to (6) are to be construed as references to subsection (1) (including that subsection as applied and modified by this subsection).
- (3) If the adult's spouse or civil partner—
- (a) is permanently separated (either by agreement or under an order of a court) from the adult; or
  - (b) has deserted, or has been deserted by, the adult and the desertion continues,
- subsection (1)(a) is to be disregarded for the purposes of subsection (1).
- (4) Relationships in different paragraphs of subsection (1) rank in the order of those paragraphs and for the purposes of that subsection (including that subsection as so applied and modified), except paragraph (e)—
- (a) a relationship of the half-blood is to be treated as a relationship of the whole blood;
  - (b) the stepchild of an adult is to be treated as the child of the adult.



- (5) Where more than one person falls within a paragraph in subsection (1), each such person ranks equally for the purpose of the paragraph; and authorisation by virtue of the paragraph in question may be given by any one of the persons falling within the paragraph.
- (6) For the purposes of subsection (1), a person's relationship with the adult is to be left out of account if—
  - (a) the person, immediately before the adult's death, was under 16 years of age;
  - (b) the person does not wish or is unable to make a decision on the issue of authorisation; or
  - (c) it is not reasonably practicable to communicate with the person in the time available.

## **51 Witnesses: additional provision**

- (1) For the purpose of the requirements in sections 6(3), 8(3), 29(4), 30(4), (5), (7) and (8), 31(2)(a) and (b)(ii), 32(4), (5), (7) and (8), 33(2)(a) and (b), 34(1)(a) and (b), 42(2)(a)(ii) and (b)(ii), 43(2)(a) and (3), 44(2)(a) and (b)(ii), 45(2)(a) and (3) and 46(2)(a) and (b) for authorisation, withdrawal of authorisation, nomination or, as the case may be, withdrawal of nomination, in writing, to be witnessed—
  - (a) a witness (or where 2 witnesses are required each witness)—
    - (i) must be a witness to both the signature and the content of the writing;
    - (ii) must be an adult;
    - (iii) must sign the writing;
  - (b) any reference to 2 witnesses is a reference to 2 witnesses who are present at the same time.
- (2) For the purposes of the requirements in sections 29(2)(b) and (3)(b)(ii) for authorisation or, as the case may be, withdrawal of authorisation, expressed verbally, to be expressed in the presence of 2 witnesses—
  - (a) each witness—
    - (i) must be a witness to the verbal expression of the authorisation or, as the case may be, the withdrawal of the authorisation;
    - (ii) must be an adult;
  - (b) the reference to 2 witnesses is a reference to 2 witnesses who are present at the same time.

## **52 Power to prescribe forms and descriptions of persons who may act as a witness**

The Scottish Ministers may by regulations prescribe—

- (a) the form in which—
  - (i) authorisation by virtue of section 30(2), 32(2) or 33(1);
  - (ii) authorisation by a person nominated in accordance with section 30(1) or 32(1),is to be given;



- (b) the form in which authorisation by virtue of section 43(1), 45(1) or 46(1) may be given;
- (c) descriptions of persons who are eligible to act as a witness in accordance with section 29(2)(b), 30(4) or (5), 31(2)(a), 32(4) or (5), 33(2)(a), 43(2)(a), 44(2)(a), 45(2)(a) or 46(2)(a).

## PART 5

### AMENDMENT OF THE ANATOMY ACT 1984

#### 53 Amendment of the Anatomy Act 1984

- (1) The Anatomy Act 1984 (c.14) is amended as follows.
- (2) In section 1 (definitions, and scope of Act)—
  - (a) for subsection (1) substitute—

“(1) In this Act, “anatomical examination” means macroscopic examination of a body for the purposes of teaching or studying, or training in or researching into, the gross structure of the human body or surgical or clinical procedures by—

    - (a) dissection,
    - (b) removal of, or carrying out a procedure on or in relation to, one or more parts of the body,
    - (c) implanting into the body any—
      - (i) part of a body,
      - (ii) prosthesis, or
      - (iii) implant,

and where any part of the body is separated in the course of its anatomical examination the examination includes the examination of the part for those purposes.”;
  - (b) after subsection (2), insert—

“(2A) An imported body is not an anatomical specimen until an authority for its anatomical examination has been given under section 4A(1).”;
  - (c) in subsection (4)—
    - (i) for the words “competent legal authority” substitute “procurator fiscal”;
    - (ii) for the words from “carried” to the end substitute “a post-mortem examination as defined in section 23 of the Human Tissue (Scotland) Act 2006 (asp 4)”;
  - (d) in subsection (5), for the words from the beginning to “research” where it second occurs, substitute “If a part of a body is authorised to be removed for transplantation, research, education, training or audit under section 6, 7, 8, 9 or 10 of the Human Tissue (Scotland) Act 2006 (asp 4), that Act (and not this Act) applies to the removal and use of the part, even if the transplantation, research, education, training or audit”.
- (3) In section 2 (control of examination and possession of anatomical specimens)—

- (a) in subsection (1)—
  - (i) in paragraph (c), for the words “section 4” substitute “sections 4 to 4B”;
  - (ii) in paragraph (d), for the words from “section 15” to the end substitute “section 22 of the 1965 Act or, where the body concerned is an imported body, death has been registered or recorded (or the equivalent) under the law concerning such matters applicable in the country or territory in which the person died”;
- (b) in subsection (2)—
  - (i) in paragraph (b), for the words “section 4” substitute “sections 4 to 4B”;
  - (ii) in paragraph (c), for the words from “section 22(1)” to the end substitute “section 24 of the 1965 Act or, where the body concerned is an imported body, a certificate or other document having the equivalent effect has been issued under the law concerning such matters applicable in the country or territory in which the person died”;
- (c) in subsection (4), the words from ““the 1953 Act”” to “and”, where it second occurs, are repealed.
- (4) In section 3(3)(b) (licences), the words from “carries” to “and” are repealed.
- (5) In section 4 (lawful examinations)—
  - (a) in subsection (1), for the words from “a person” to “request” substitute “a person, who at the time the request is made is 12 years of age or over, requests”;
  - (b) after that subsection, insert—
    - “(1A) A request by a person under subsection (1) must be in writing and—
      - (a) signed by the person and subject to subsection (1C)(a), witnessed by an adult who is a witness to both the signature and the content of, and signs, the writing, or
      - (b) subject to subsections (1C)(b) and (1D), if the person is blind or unable to write, signed by an adult (the “signatory”) on his behalf and witnessed by another adult who is a witness to both the signature and the content of, and signs, the writing.
    - (1B) A request by a person under subsection (1) which is signed by a signatory on behalf of the person and witnessed as mentioned in subsection (1A)(b) must contain a statement signed by both the signatory and the witness in the presence of the person and of each other that the person, in the presence of them both, expressed his intention to make the request and requested the signatory to sign the request on his behalf.
    - (1C) If the person making the request under subsection (1) is 12 years of age or over but not an adult—
      - (a) in the circumstances mentioned in subsection (1A)(a)—
        - (i) the request must be witnessed by two adults who are present at the same time, and
        - (ii) each witness must, at the time of witnessing, certify (in writing signed by the witness) that, in the opinion of the witness, the person understood the effect of the request and was not acting under undue influence in making it,

- (b) in the circumstances mentioned in subsection (1A)(b)—
  - (i) the signatory must, at the time of signing on behalf of the person, certify (in writing signed by the signatory) that, in the opinion of the signatory, the person understands the effect of the request and is not acting under undue influence in making it, and
  - (ii) the witness must, at the time of witnessing, certify (in writing signed by the witness) that, in the opinion of the witness, the person understands the effect of the request and is not acting under undue influence in making it.
- (1D) Nothing in paragraph (b) of subsection (1A) prevents a person who is blind from signing a request under subsection (1) in accordance with paragraph (a) of subsection (1A).”;
- (c) subsection (3) is repealed;
- (d) in subsection (4), for the words “subsections (6) to (8)” substitute “subsection (6) and section 4B(1) and (2)”;
- (e) in subsection (6), the words “This subsection applies only to Scotland.” are repealed;
- (f) subsections (7) and (8) are repealed;
- (g) after subsection (9), insert—

“(9A) This section does not apply to the use of an imported body for anatomical examination.”;
- (h) subsections (10) and (11) are repealed.
- (6) After that section, insert—

**“4A Lawful examinations: imported bodies**

  - (1) Subject to subsection (2), the person lawfully in possession of an imported body may authorise use of the body for anatomical examination if—
    - (a) the body is imported for use for anatomical examination in Scotland,
    - (b) either—
      - (i) there has been no previous examination of the imported body outwith Scotland (being anatomical examination or examination which has the characteristics of anatomical examination), or
      - (ii) there has been such an examination of it but only for the purpose of removing and retaining one or more parts of the body for the purposes of education, training or research, and
    - (c) no more than three years have elapsed since the date of death.
  - (2) The person may only authorise such use if licensed under section 3(2) to—
    - (a) carry out anatomical examinations, and
    - (b) have possession of anatomical specimens.
  - (3) Subject to section 4B(1) and (2), the anatomical examination of an imported body in accordance with an authority given in pursuance of this section is lawful by virtue of this section.

**4B Lawful examinations: additional provision**

- (1) No authority may be given under section 4(2) or 4A(1) in respect of a body by a person entrusted with the body for the purpose only of its interment or cremation.
  - (2) Authority under section 4(2) or 4A(1) expires at the end of the statutory period (even if the person lawfully in possession of the body concerned authorises its use under section 4(2) or, as the case may be, 4A(1) for a longer or a shorter period or for no particular period).
  - (3) In subsection (2), “the statutory period” means the period of 3 years (or such other period as the Scottish Ministers may from time to time by order specify for the purposes of this subsection) beginning with the date of the deceased’s death.
  - (4) The power to make an order under subsection (3) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament; and no such order shall apply in relation to the body of a person who died before the coming into force of the order.”.
- (7) In section 5 (control of possession after examination)—
- (a) for subsection (1) substitute—
 

“(1) This section applies where—

    - (a) authority under section 4(2) or, as the case may be, 4A(1) to use a body for anatomical examination has expired,
    - (b) the anatomical examination of a body has been concluded before the expiry of such authority, or
    - (c) a body has been used for examination outwith Scotland (being anatomical examination or examination which has the characteristics of anatomical examination) except in a case where—
      - (i) that examination was only for the purpose of removing or retaining one or more parts of the body for the purposes of education, training or research,
      - (ii) the body is imported for use for anatomical examination in Scotland, and
      - (iii) no more than three years have elapsed since the date of death,
 whether or not the body or part of the body has undergone any process to preserve it.”;
  - (b) in subsection (2), for “and (4)” substitute “, (4) and (4A)”;
  - (c) for subsection (4) substitute—
 

“(4) Subsection (2) does not apply—

    - (a) where—
      - (i) a person has possession of a part of a body whose anatomical examination has been concluded before the expiry of the authority under section 4(2) or, as the case may be, 4A(1),
      - (ii) the part is such that the person from whose body it came cannot be recognised simply by examination of the part,

- (iii) the person with possession is authorised to have possession under subsection (5), and
      - (iv) possession of the part is lawful by virtue of section 6, nor
    - (b) where—
      - (i) a person has possession of a part of a body which has been used for examination outwith Scotland (being anatomical examination or examination which has the characteristics of anatomical examination),
      - (ii) the part was removed from the body during the course of the examination,
      - (iii) the death of the person from whose body the part has come has been registered or recorded (or the equivalent) under the law applicable in the country or territory in which the person died,
      - (iv) the part is such that the person from whose body it came cannot be recognised simply by examination of the part, and
      - (v) the person with possession is authorised to have possession under subsection (5).
  - (4A) Subsection (2) does not apply where—
    - (a) a person has possession of a body which has been used for examination outwith Scotland (being anatomical examination or examination which has the characteristics of anatomical examination),
    - (b) the death of the deceased has been registered or recorded (or the equivalent) under the law applicable in the country or territory in which the deceased died,
    - (c) the body was not imported for use for anatomical examination in Scotland; and is not so used at any time,
    - (d) the body is such that the deceased cannot be recognised simply by examination of the body, and
    - (e) the person with possession of the body is authorised to have possession under subsection (5).”;
  - (d) in subsection (5)—
    - (i) after the word “education” insert “, training”;
    - (ii) after the word “of”, at the third place it occurs, insert “bodies or, as the case may be,”;
    - (iii) after the word “of”, at the fifth place it occurs, insert “a body or”;
  - (e) in subsection (6)(a), after the word “to” insert “bodies or”.
- (8) In section 6 (lawful possession after examination)—
- (a) in subsection (1)—
    - (i) repeal the words “a person, in expressing”;
    - (ii) for “has given” substitute “includes”;
    - (iii) for “his” substitute “the person’s”;

(b) for subsection (3) substitute—

“(3) Authority given under section 4A(1) for the use of an imported body for anatomical examination may include authority for possession of parts (or any specified parts) of the body to be held in accordance with the authority after the examination is concluded.”.

(9) After section 6, insert—

*“Control of public display*

**6A Control of public display**

(1) Subject to subsections (2) to (8), no person shall publicly display—

- (a) an anatomical specimen,
- (b) a body or part of a body which has been used for anatomical examination, or
- (c) a body or part of a body which has been used outwith Scotland for anatomical examination or examination which has the characteristics of anatomical examination,

whether or not it has undergone a process to preserve it.

(2) Subsections (3)(c), (5)(e), (7)(d) and (8)(d) do not apply to such persons as the Scottish Ministers may by order specify; being persons responsible for the operation or control of such museums as they may so specify.

(3) Where—

- (a) a person is authorised under section 5(5) to have possession of a part of a body,
- (b) possession of the part is lawful by virtue of section 6, and
- (c) the display is authorised under subsection (9),

subsection (1) does not apply as respects the public display of the part if the condition in subsection (4) is met.

(4) The condition is that where the lawful possession of the part by virtue of section 6 is—

- (a) in pursuance of a request under section 4(1), that request also includes permission for public display (and there is no reason to believe that permission was withdrawn), or
- (b) in pursuance of an authority under section 4A(1), that authorisation also includes authority for public display.

(5) Where—

- (a) a person is authorised under section 3(4) to have possession of an anatomical specimen,
- (b) the anatomical specimen is in the course of being used for anatomical examination in pursuance of an authority under section 4(2) or 4A(1),
- (c) the body or a part of the body is such that the deceased cannot be recognised simply by examination of the body or, as the case may be, the part,
- (d) the statutory period referred to in section 4B(2) has not expired, and

- (e) the display is authorised under subsection (9),  
subsection (1) does not apply as respects the public display of the body or, as the case may be, the part of the body, if the condition in subsection (6) is met.
- (6) The condition is that where the anatomical examination is—
  - (a) in pursuance of a request under section 4(1), that request also includes permission for public display (and there is no reason to believe that permission was withdrawn), or
  - (b) in pursuance of an authority under section 4A(1), that authorisation also includes authority for public display.
- (7) Where—
  - (a) a person is authorised under section 5(5) to have possession of a part of a body,
  - (b) the part is a part of a body which has been used outwith Scotland for anatomical examination or examination which has the characteristics of anatomical examination,
  - (c) the part was removed from the body during the course of that examination, and
  - (d) the display is authorised under subsection (9),subsection (1) does not apply as respects the public display of the part.
- (8) Where—
  - (a) a person is authorised under section 5(5) to have possession of a body,
  - (b) the body has been used outwith Scotland for anatomical examination or examination which has the characteristics of anatomical examination,
  - (c) the body was not imported for use for anatomical examination in Scotland; and is not so used at any time, and
  - (d) the display is authorised under subsection (9),subsection (1) does not apply as respects the public display of the body.
- (9) If the Scottish Ministers think it desirable to do so in the interests of education, training or research, they may grant a licence to a person to publicly display the body or, as the case may be, the part, and a person is authorised under this subsection to so display a body or a part of a body if, at the time of the display he is licensed under this subsection.
- (10) No person, whether the holder of a licence granted under subsection (9) or not, may publicly display a body or a part of a body while—
  - (a) any procedure in relation to an anatomical examination, or
  - (b) any similar procedure,is being carried out.
- (11) In subsection (10)(a) the reference to “procedure” includes dissection, removal and implantation.
- (12) A person to whom a licence has been granted under subsection (9) shall—



- (a) compile such records as may be specified by regulations made by the Scottish Ministers, and
  - (b) retain for such period as may be so specified any records compiled in accordance with paragraph (a).
- (13) For the purposes of this section, public display, in relation to the body or part of the body of a deceased person (including an anatomical specimen) does not include—
- (a) display of the body or part for the purposes of enabling people to pay their final respects to the deceased or which is incidental to the deceased’s funeral,
  - (b) use of the body or part for the purpose of public display at a place of public religious worship, or at a place associated with such a place, if there is a connection between the body or, as the case may be, the part and the religious worship which takes place at the place in question.
- (14) The power to make an order under subsection (2) or regulations under subsection (12)(a) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”.
- (10) In section 7 (licences: general provisions)—
- (a) in subsection (7), after the word “Act” insert “, subject to subsection (7A),”;
  - (b) after that subsection, insert—
    - “(7A) Subsection (7) does not apply in relation to a decision of the Scottish Ministers to revoke a licence under this Act if the Ministers consider that there would be a risk to public health if the requirements of that subsection were to apply, and where the Scottish Ministers consider that to be the case they shall notify the person to whom the licence was granted of the revocation and that for the reasons mentioned in this subsection the revocation takes effect on the date specified in the notification.”;
  - (c) in subsection (8), after the word “(7)” insert “or (7A)”.
- (11) After that section, insert—
- “7A Appeal to sheriff principal against licence decision**
- (1) This section applies to a decision of the Scottish Ministers under—
- (a) section 3(1) refusing to grant a licence for the use of premises for carrying out anatomical examinations,
  - (b) section 3(2) refusing to grant a licence to a person to—
    - (i) carry out anatomical examinations, or
    - (ii) have possession of anatomical specimens,
  - (c) section 5(5) refusing to grant a licence to a person to have possession of a body or a part of a body,
  - (d) section 6A(9) refusing to grant a licence to a person to publicly display a body or a part of a body,
  - (e) section 7(5) granting a licence subject to conditions,
  - (f) section 7(6)(a) revoking a licence.

- (2) The—
- (a) applicant, in the case of a decision referred to in subsection (1)(a), (b), (c), (d) or (e), and
  - (b) person to whom the licence was granted, in the case of a decision referred to in subsection (1)(f),
- may, before the expiry of the period of 21 days beginning with the day the decision is made, appeal under this section to the sheriff principal against the decision on one or more of the grounds mentioned in subsection (3).
- (3) The grounds are that the Scottish Ministers in arriving at their decision—
- (a) erred in law,
  - (b) based their decision on any incorrect material fact,
  - (c) acted contrary to natural justice, or
  - (d) exercised their discretion in an unreasonable manner.
- (4) An appeal to the sheriff principal under this section is to be—
- (a) where the appeal is against a decision under—
    - (i) section 3(1),
    - (ii) section 7(5) or 7(6)(a) in respect of a licence for the use of premises,to the sheriff principal of the sheriffdom in which the premises are situated;
  - (b) in any other case, to—
    - (i) the sheriff principal of the sheriffdom in which the appellant resides, or
    - (ii) the sheriff principal of the Sheriffdom of Lothian and Borders at Edinburgh.
- (5) In allowing an appeal under this section, the sheriff principal—
- (a) shall set aside the decision, and
  - (b) shall—
    - (i) if he considers that he can do so on the facts considered to be established by the Scottish Ministers, substitute his own decision, or
    - (ii) remit the case to the Scottish Ministers for consideration anew.”.
- (12) In section 8(1) (regulations)—
- (a) in paragraph (a), after the word “4” insert “or section 4A”;
  - (b) in paragraph (b)—
    - (i) after the word “to”, at the first place it occurs, insert “bodies or”;
    - (ii) for the words “lawful by virtue of section 6” substitute “authorised under section 5(5)”;
  - (c) after that paragraph, insert “,

- (c) in relation to bodies or parts of bodies the display of which is authorised under section 6A(9) with a view to securing that the bodies or parts are decently cared for and displayed with appropriate respect”.

(13) After that section, insert—

**“8A Code of practice**

- (1) The Scottish Ministers may prepare a code of practice for the purpose of—
- (a) giving practical guidance to persons—
    - (i) licensed under section 3(2) to carry out anatomical examinations or to have possession of anatomical specimens,
    - (ii) authorised under section 5(5) to have possession of a body or parts of a body,
    - (iii) authorised under section 6A(9) to publicly display a body or parts of a body, and
  - (b) laying down standards expected in relation to such activities.
- (2) A code of practice prepared under subsection (1) may not be given effect unless and until it has been—
- (a) confirmed by order, and
  - (b) brought into force on a day appointed by order,
- by the Scottish Ministers.
- (3) The Scottish Ministers shall, before confirming a code of practice by order under subsection (2)(a)—
- (a) consult such persons as they see fit, and
  - (b) lay a draft of the code before the Scottish Parliament.
- (4) The Scottish Ministers shall publish a code of practice so confirmed in such way as, in their opinion, is likely to bring it to the attention of those interested in it.
- (5) The Scottish Ministers shall—
- (a) keep a code of practice confirmed by order under subsection (2)(a) under review, and
  - (b) prepare a revised code of practice where appropriate.
- (6) Subsections (2) to (4) apply to a revised code of practice prepared under subsection (5)(b) as they apply to a code of practice prepared under subsection (1).
- (7) Any person licensed or authorised as mentioned in subsection (1)(a) shall have regard to the provisions of a code of practice published under subsection (4) for the time being in force (so far as the provisions are applicable to the activity the person is licensed or, as the case may be, authorised to carry out); but a failure on the part of any such person to observe any provision of such code of practice shall not of itself render the person liable to any proceedings.

- (8) The Scottish Ministers may, in carrying out their functions under this Act with respect to licences, take into account any relevant observance of, or failure to observe, a code of practice published under subsection (4), so far as dealing with an application for a licence under section 3(2), 5(5) or 6A(9).
- (9) The power to make an order under subsection (2)(a) or (b) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”.
- (14) In section 9(1) (inspectors of anatomy), the words “Her Majesty’s Inspector of Anatomy or (if the terms of the appointment so provide)” are repealed.
- (15) In section 10 (inspector’s power to inspect records and premises)—
- (a) in subsection (1), for the words “or 5(6)” substitute “, 5(6) or 6A(12)”;
  - (b) in subsection (2)(a), for the words “section 11(1)(a)” substitute “section 11(1)”;
  - (c) subsection (5) is repealed.
- (16) In section 11 (offences)—
- (a) in subsection (1)—
    - (i) the word “or” following paragraph (b) is repealed;
    - (ii) after paragraph (c), insert “or
    - (d) publicly displays a body or part of a body in contravention of section 6A(1) or (10),”;
  - (b) in subsection (5), in each of paragraphs (a), (b) and (c) for the words “or 5(6)” substitute “, 5(6) or 6A(12)”;
  - (c) in subsection (9), after the word “director,” insert “member,”;
  - (d) after that subsection, insert—
- “(9A) Where an offence under this section or against regulations under section 8 is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a partner or a person who was purporting to act in such capacity, that person, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (9B) Where an offence under this section or against regulations under section 8 is committed by an unincorporated association other than a Scottish partnership and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person who is concerned in the management or control of the association or a person who was purporting to act in any such capacity, that person, as well as the unincorporated association, is guilty of the offence and liable to be proceeded against and punished accordingly.”.
- (17) Before section 12, insert—
- “11A Interpretation**
- In this Act—
- “adult” means a person who is 16 years of age or over,

“imported body” means the body of a deceased person who died outwith Scotland (and whose normal or usual place of residence immediately before his death was outwith Scotland) which is imported into Scotland from a place outside Scotland; and any reference to “imported” shall be construed accordingly.”.

## PART 6

### MISCELLANEOUS

#### **54 Arrangements by the Scottish Ministers for assistance with functions under section 1, 2, 17(3), (4) or (5), 18, 19(2) or 20(3)**

- (1) The Scottish Ministers may make arrangements with a public authority in the United Kingdom for the authority to assist them (directly or indirectly) in relation to any of their functions under section 1, 2, 17(3), (4) or (5) (except the Ministers’ powers under that section to make regulations), 18 (except the Ministers’ power under that section to make regulations), 19(2) or 20(3).
- (2) Assistance under such arrangements may take the form of the carrying out by the authority of the function.
- (3) Arrangements under this section do not affect the responsibility for the carrying out of the Scottish Ministers’ functions.

#### **55 Power to give effect to Community obligations**

- (1) The Scottish Ministers may by regulations amend this Act for the purpose of—
  - (a) implementing a relevant obligation or enabling a relevant obligation to be implemented;
  - (b) dealing with matters arising out of or related to a relevant obligation.
- (2) The power under subsection (1) includes—
  - (a) (in particular) power to add or omit provisions;
  - (b) power consequentially to amend or repeal any other enactment and any instrument made under an enactment.
- (3) In this section, “relevant obligation” means a Community obligation of the United Kingdom relating to material which consists of, includes or is derived from human cells.

#### **56 Bodies corporate etc.**

- (1) Where an offence under section 16(1), 17, 19(4), 20(1) or (2) or 37(1) which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of—
  - (a) a director, manager or secretary, member or other similar officer of the body corporate; or
  - (b) any person who was purporting to act in any such capacity,that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

- (2) Where an offence under section 16(1), 17, 19(4), 20(1) or (2) or 37(1) which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of—
- (a) a partner; or
  - (b) a person who was purporting to act in any such capacity,
- that person, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) Where an offence under section 16(1), 17, 19(4), 20(1) or (2) or 37(1) which has been committed by an unincorporated association other than a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a person who is concerned in the management or control of the association; or
  - (b) any person who was purporting to act in any such capacity,
- that person, as well as the unincorporated association, is guilty of the offence and liable to be proceeded against and punished accordingly.

**57 Amendment of the Adults with Incapacity (Scotland) Act 2000**

- (1) The Adults with Incapacity (Scotland) Act 2000 (asp 4) is amended as follows.
- (2) In section 16(6) (creation and exercise of welfare power of attorney)—
- (a) the word “or” at the end of paragraph (a) is repealed;
  - (b) after paragraph (b), insert “;
  - (c) make, on behalf of the granter, a request under section 4(1) of the Anatomy Act 1984 (c.14);
  - (d) give, on behalf of the granter, an authorisation under, or by virtue of, section 6(1), 17, 29(1) or 42(1) of the Human Tissue (Scotland) Act 2006 (asp 4); or
  - (e) make, on behalf of the granter, a nomination under section 30(1) of that Act”.
- (3) In section 64(2) (functions and duties of guardian)—
- (a) the word “or” at the end of paragraph (a) is repealed;
  - (b) after paragraph (b), insert “;
  - (c) make, on behalf of the adult, a request under section 4(1) of the Anatomy Act 1984 (c.14);
  - (d) give, on behalf of the adult, an authorisation under, or by virtue of, section 6(1), 17, 29(1) or 42(1) of the Human Tissue (Scotland) Act 2006 (asp 4); or
  - (e) make, on behalf of the adult, a nomination under section 30(1) of that Act”.

**PART 7**

## GENERAL

**58 Ancillary provision**

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act.
- (2) An order under this section may—
  - (a) make different provision for different purposes;
  - (b) modify any enactment, instrument or document.

**59 Regulations or orders**

- (1) Any power conferred by this Act on the Scottish Ministers to make regulations or orders—
  - (a) must be exercised by statutory instrument;
  - (b) may be exercised so as to make different provision for different purposes.
- (2) A statutory instrument containing an order or regulations made under this Act (except an order under section 62(2)) is, subject to subsection (3), subject to annulment in pursuance of a resolution of the Parliament.
- (3) A statutory instrument containing—
  - (a) regulations under section 55 or an order under section 58 containing provisions which add to, replace or omit any part of the text of an Act;
  - (b) regulations under section 17(3), (4) or (5),

is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

**60 Interpretation**

- (1) In this Act unless the context otherwise requires—
  - “adult” means a person who is 16 years of age or over;
  - “child” means a person who is under the age of 16 years;
  - “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);
  - “parental responsibilities” has the meaning given by section 1(3) of the Children (Scotland) Act 1995 (c.36);
  - “parental rights” has the meaning given by section 2(4) of that Act;
  - “post-mortem examination” has the meaning given by section 23;
  - “tissue” includes skin, a cornea and bone marrow;
  - “tissue sample” includes any derivative of skin.
- (2) In this Act, references to transplantation are to transplantation into a human body; and references to “transplant” or to “transplants” are to be construed accordingly.



**61 Repeals**

The enactments specified in column 1 of the schedule are repealed to the extent specified in column 2.

**62 Short title and commencement**

- (1) This Act may be cited as the Human Tissue (Scotland) Act 2006.
- (2) The provisions of this Act, except this section and sections 52, 59 and 60, come into force on such day as the Scottish Ministers may by order appoint.
- (3) Different days may be appointed under subsection (2) for different purposes.

SCHEDULE  
*(introduced by section 61)*

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
Human Tissue Act 1961 (c.54)	The whole Act.
Corneal Tissue Act 1986 (c.18)	The whole Act.
Human Organ Transplants Act 1989 (c.31)	The whole Act.