



Human Tissue (Authorisation) (Scotland) Act 2019

2019 asp 11

PART 4

GENERAL AND FINAL PROVISIONS

25 Meaning of “the 2006 Act”

In this Act “the 2006 Act” means the Human Tissue (Scotland) Act 2006.

26 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under this section may—
 - (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes.
- (3) Regulations under subsection (1) which contain provision adding to, replacing or omitting any part of the text of an Act are subject to the affirmative procedure.
- (4) Otherwise, regulations under subsection (1) are subject to the negative procedure.

27 Interpretation

- (1) The 2006 Act is amended as follows.
- (2) After section 16I insert—

“16J Meaning of “health worker”

- (1) In sections 1 to 16K, “health worker” means—
 - (a) a registered medical practitioner,

Status: This is the original version (as it was originally enacted).

- (b) a registered nurse,
 - (c) a person (or person within a description) in so far as that person is (or persons of that description are) authorised by a person listed in subsection (2) to exercise the functions of a health worker under sections 6A to 16I.
- (2) The persons are—
 - (a) a registered medical practitioner,
 - (b) a registered nurse,
 - (c) a Health Board,
 - (d) a Special Health Board,
 - (e) the Common Services Agency for the Scottish Health Service.
- (3) An authorisation under subsection (1)(c) may, in particular—
 - (a) authorise a person (or description of person) to exercise some or all of the functions of a health worker under sections 6A to 16I,
 - (b) authorise a person (or description of person) to exercise functions in relation to particular cases or classes of case,
 - (c) authorise different persons (or descriptions of person) to exercise different functions.
- (4) An authorisation under subsection (1)(c) may be given only if the person listed in subsection (2) considers that the person (or the description of person) has the appropriate skills, qualifications or experience to carry out the functions in respect of which the authorisation is given.
- (5) An authorisation under subsection (1)(c) may be revoked—
 - (a) in the case of an authorisation given to a description of person by a person other than a registered medical practitioner or a registered nurse, by the person who gave that authorisation, and
 - (b) in any other case, by any person listed in subsection (2).
- (6) The Scottish Ministers may give directions (of a general or specific nature) to persons listed in subsection (2) in relation to authorisations under subsection (1)(c).
- (7) A person listed in subsection (2) must comply with any direction given to the person under subsection (6) when authorising a person (or description of person) under subsection (1)(c).
- (8) The Scottish Ministers may by regulations—
 - (a) modify the list in subsection (1),
 - (b) modify the list in subsection (2),so as to add to, amend or remove any entry on the list.”.
- (3) In section 59(3) (regulations subject to affirmative procedure), after paragraph (ad) insert—
 - “(ae) regulations under section 16J(8);”.
- (4) After section 16J insert—

“16K Interpretation and meaning of “relevant time”

- (1) In sections 1 to 16J and this section—
- “excepted body part” has the meaning given in section 6D(5),
 - “express authorisation” has the meaning given in section 6(1),
 - “Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978,
 - “health worker” has the meaning given in section 16J(1),
 - “incapable of understanding the nature and consequences of deemed authorisation” has the meaning given in section 6D(3),
 - “medical treatment”, in relation to a person, means any procedure or treatment that has the purpose of safeguarding or promoting the person’s physical or mental health,
 - “non-resident adult” has the meaning given in section 6D(2)(a),
 - “opt-out declaration” has the meaning given in section 6B(1),
 - “pre-death procedure” has the meaning given in section 16A,
 - “register organisation” has the meaning given in section 2B(2),
 - “Special Health Board” means a board constituted by order under section 2(1)(b) of the National Health Service (Scotland) Act 1978,
 - “writing” includes representation of a character in visible form.
- (2) For the purposes of sections 1 to 16J, this section and section 50, “relevant time” means—
- (a) in relation to a living person, when—
 - (i) in the view of the health worker primarily responsible for the person’s medical treatment, the person is likely to die imminently (including as a result of the withdrawal of life-sustaining treatment),
 - (ii) where the person is receiving life-sustaining treatment, the decision to withdraw that treatment has been taken by that health worker, and
 - (iii) in the case of a person who is 12 years of age or over, that health worker is of the view that the person is incapable by reason of ill health of making a decision about the removal and use of a part of the person’s body for a purpose referred to in section 3(1),
 - (b) in relation to a deceased person, immediately before the person’s death.”.
- (5) The following are repealed—
- (a) section 6(6),
 - (b) section 8(7),
 - (c) section 16(2).
- (6) In section 14(5), the definitions of “Health Board” and “Special Health Board” are repealed.

28 Minor and consequential modifications

- (1) In section 1(5) of the Anatomy Act 1984—
- (a) for “or audit” in each place where it occurs substitute “, audit or quality assurance”,
 - (b) for “7, 8, 9 or 10” substitute “6D, 6E, 6F, 6G, 6H, 8, 8D, 10 or 10A”.
- (2) The Adults with Incapacity (Scotland) Act 2000 is amended as follows—
- (a) in section 16(6)—
 - (i) in paragraph (d), after “section 6(1),” insert “16F(1)(a)”,
 - (ii) after paragraph (d), insert—
 - “(da) withdraw an authorisation, on behalf of the granter, by virtue of section 6A(1) of that Act;
 - (db) make, on behalf of the granter, an opt-out declaration by virtue of section 6B(1) of that Act;
 - (dc) withdraw an opt-out declaration, on behalf of the granter, by virtue of section 6C(1) of that Act;”,
 - (b) in section 64(2)—
 - (i) in paragraph (d), after “section 6(1),” insert “16F(1)(a)”,
 - (ii) after paragraph (d), insert—
 - “(da) withdraw an authorisation, on behalf of the adult, by virtue of section 6A(1) of that Act;
 - (db) make, on behalf of the adult, an opt-out declaration by virtue of section 6B(1) of that Act;
 - (dc) withdraw an opt-out declaration, on behalf of the adult, by virtue of section 6C(1) of that Act;”.
- (3) The 2006 Act is amended as follows—
- (a) in section 3(2)(a), for “7, 8, 9 or, as the case may be, 10” substitute “6D, 6E, 6F, 6G, 6H, 8, 8D, 10 or, as the case may be, 10A”,
 - (b) in section 12, for “6(1), 7(1), (2) or (3), 8(1), 9(1), (2) or (3) or 10(1)” substitute “6, 6D, 6E, 6F, 6G, 8, 8D, 10 or, as the case may be, 10A”,
 - (c) in section 15(1)—
 - (i) for the words “expressed verbally” in both places where they occur substitute “given orally”,
 - (ii) for “expressed” in both places where it occurs substitute “given”,
 - (iii) for “authorisation by the adult in accordance with section 6(1)” substitute “an express authorisation by the adult”,
 - (d) in section 16(1)(a), for “7, 8, 9 or, as the case may be, 10” substitute “6D, 6E, 6F, 6G, 6H, 8, 8D, 10 or, as the case may be, 10A”,
 - (e) in section 22—
 - (i) in subsection (1), for “authorisation by an adult by virtue of section 6(1)” substitute “an express authorisation by an adult”,
 - (ii) after subsection (1), insert—

“(1A) Where an adult is deemed to have authorised the removal and use of a part of the adult’s body for transplantation by virtue of section 6D(1), the authorisation takes priority as respects the part over—

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- (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 at the relevant time,
- (b) any right of any other person to give authorisation as respects the deceased adult by virtue of section 30(1) or (2).”,
- (iii) subsection (3) is repealed,
- (iv) in subsection (4), for “9(1), (2) or (3) or 10(1)” substitute “8D, 10 or 10A”,
- (f) in section 49(1)(a), for “7(1), 9(1) or 10(1)” substitute “6H, 8D, 10 or 10A”,
- (g) in section 51(1), for “6(3), 8(3)” substitute “10D”.

29 Commencement

- (1) This section and sections 25, 26 and 30 come into force on the day after Royal Assent.
- (2) The rest of this Act comes into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under this section may appoint different days for different purposes.
- (4) Regulations under this section may—
 - (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

30 Short title

The short title of this Act is the Human Tissue (Authorisation) (Scotland) Act 2019.