

# HUMAN TISSUE (SCOTLAND) ACT 2006

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## EXPLANATORY NOTES

### THE ACT – AN OVERVIEW

#### Part 1: Transplantation Etc.

##### *Section 7 – Authorisation by adult's nearest relative*

10. **Section 7(1)** provides that where no authorisation by the adult for the removal and use of body parts for transplantation is in force immediately before the adult's death, the adult's nearest relative can authorise the removal and use of any body part for one or more of the purposes set out in section 3(1), subject to the terms of section 7(4).
11. **Section 7(2)** provides that if there is in force immediately before an adult's death authorisation by the adult of the removal and use of body parts for transplantation, but that authorisation does not expressly include removal and use of the body parts for education or training, research or audit, the nearest relative can authorise the removal and use for one or more of those purposes, subject to the terms of section 7(4).
12. **Section 7(3)** provides that if there is in force immediately before an adult's death authorisation of the removal and use of a particular body part for transplantation and the authorisation does not expressly include removal and use of another particular part, the nearest relative can authorise the removal and use of the other particular part for one or more of the purposes of education and training, research or audit, subject to the terms of section 7(4).
13. **Section 7(4)(a)** provides that the nearest relative may not give authorisation under section 7(1) if he or she 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. Section 7(4)(b) provides that the nearest relative may not give authorisation under section 7(2) if he or she has actual knowledge that the adult was unwilling for the body part to be used for the purpose in question. Section 7(4)(c) provides that the nearest relative may not give authorisation under section 7(3) if he or she has actual knowledge that the adult was unwilling for any other part of the adult's body, or the other particular part in question, to be used for transplantation.
14. **Section 7(5)** provides that "unwillingness" should not be implied simply by the fact that the adult had not provided authorisation as respects the particular purpose, use or part.
15. **Section 7(6)(a)** provides that authorisation by virtue of subsections (1), (2) and (3) must be in writing and signed, or may be expressed verbally by the nearest relative. Paragraph (b) of subsection (6) provides that such authorisation for the purposes of research, education, training or audit may be withdrawn in writing and signed by the nearest relative.
16. **Section 7(7)** prevents the withdrawal of authorisation given by an adult's nearest relative under section 7(1) for the purposes of transplantation.