



# Human Tissue (Scotland) Act 2006

## 2006 asp 4

### PART 1

#### TRANSPLANTATION ETC.

*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.

#### **Commencement Information**

**II** S. 3 in force at 1.9.2006 by S.S.I. 2006/251, art. 3

### **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

*Status: Point in time view as at 01/09/2006.*

**Changes to legislation:** There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

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.

**Commencement Information**

**I2** S. 4 in force at 1.9.2006 by S.S.I. 2006/251, art. 3

**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.

**Commencement Information**

**I3** S. 5 in force at 1.9.2006 by S.S.I. 2006/251, art. 3

**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.

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- (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.

#### **Commencement Information**

**I4** S. 6 in force at 1.9.2006 by [S.S.I. 2006/251](#), [art. 3](#)

### **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—

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- (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.

#### Commencement Information

**I5** S. 7 in force at 1.9.2006 by S.S.I. 2006/251, art. 3

## 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,

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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.

#### Commencement Information

**16** S. 8 in force at 1.9.2006 by S.S.I. 2006/251, art. 3

## 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—

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- (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.

#### Commencement Information

**I7** S. 9 in force at 1.9.2006 by S.S.I. 2006/251, art. 3

## 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.

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- (3) To the extent that authorisation by virtue of subsection (1) is for the purposes of transplantation, it may not be withdrawn.

#### **Commencement Information**

**18** S. 10 in force at 1.9.2006 by [S.S.I. 2006/251](#), [art. 3](#)

### **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 registered medical practitioner; or
  - 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—
- 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);
  - 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—
- either—
    - by personal examination of the body, that life is extinct; or
    - that another registered medical practitioner, by such personal examination, is so satisfied;
  - 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
  - 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—
- 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;
  - in the case of authorisation by virtue of section 6(1) which is in writing, it bears—
    - to be as respects the deceased adult;
    - to authorise removal of the part for the purpose in question;
    - to be by the adult;

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- (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;



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- (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;

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- (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;

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- (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).

#### Commencement Information

**I9** S. 11(1)(a)(3)-(5) in force at 1.9.2006 by [S.S.I. 2006/251](#), [art. 3](#)

**I10** S. 11(1)(b)(2) in force at 1.9.2006 in so far as not already in force by [S.S.I. 2006/251](#), [arts. 2, 3](#), [Sch.](#)

## 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.

#### Commencement Information

**I11** [S. 12](#) in force at 1.9.2006 by [S.S.I. 2006/251](#), [art. 3](#)

## 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;

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- (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) of the National Health Service (Scotland) Act 1978 (c. 29).

#### **Commencement Information**

**I12** S. 13 in force at 1.9.2006 by [S.S.I. 2006/251](#), **art. 3**

## **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,

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may be retained and used for any such purpose.

**Commencement Information**

**I13** S. 14 in force at 1.9.2006 by S.S.I. 2006/251, art. 3

**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.

**Commencement Information**

**I14** S. 15 in force at 1.9.2006 by S.S.I. 2006/251, art. 3

**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;

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- (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.

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**Commencement Information**

**I15** [S. 16](#) in force at 1.9.2006 by [S.S.I. 2006/251](#), [art. 3](#)

**Status:**

Point in time view as at 01/09/2006.

**Changes to legislation:**

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