



Human Tissue (Scotland) Act 2006

2006 asp 4

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;

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- (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);

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- (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;

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- (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.