



# Human Tissue (Scotland) Act 2006

## 2006 asp 4

### 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.