



# Human Tissue (Scotland) Act 2006

## 2006 asp 4

### PART 4

#### PARTS 1 TO 3: SUPPLEMENTARY PROVISION

#### **49 Conditions attached to authorisation**

(1) Authorisation—

- (a) by virtue of section 7(1), 9(1) or 10(1) of removal and use of a part of a body for a purpose referred to in section 3(1)(b) to (d);
- (b) by a person nominated by virtue of section 30(1) of a matter referred to in section 29(1);
- (c) by virtue of section 30(2) of a matter referred to in section 29(1);
- (d) by a person nominated by virtue of section 32(1) of a matter referred to in section 31(1);
- (e) by virtue of section 32(2) or 33(1) of a matter referred to in section 31(1);
- (f) by virtue of section 43(1) of a matter referred to in section 42(1);
- (g) by virtue of section 45(1) or 46(1) of a matter referred to in section 44(1),

may be accompanied by a request that the matter authorised is to be carried out subject to conditions specified in the authorisation.

- (2) Where a request is made by virtue of subsection (1), the matter must be carried out (in so far as it is reasonably practicable to do so) in accordance with the conditions.

#### **50 Nearest relative**

- (1) For the purposes of sections 7 and 30, the nearest relative is the person who immediately before the adult's death was—

- (a) the adult's spouse or civil partner;
- (b) living with the adult as husband or wife or in a relationship which had the characteristics of the relationship between civil partners and had been so living for a period of not less than 6 months (or if the adult was in hospital immediately before death had been so living for such period when the adult was admitted to hospital);
- (c) the adult's child;

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*Status: This is the original version (as it was originally enacted).*

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- (d) the adult's parent;
  - (e) the adult's brother or sister;
  - (f) the adult's grandparent;
  - (g) the adult's grandchild;
  - (h) the adult's uncle or aunt;
  - (i) the adult's cousin;
  - (j) the adult's niece or nephew;
  - (k) a friend of longstanding of the adult.
- (2) Subsection (1) applies for the purposes of section 43 as it applies for the purposes of sections 7 and 30 as if after paragraph (k) of that subsection there were inserted (in an additional paragraph) an additional category of person, namely “a person who had a longstanding professional relationship with the adult”; and accordingly references to subsection (1) in subsections (4) to (6) are to be construed as references to subsection (1) (including that subsection as applied and modified by this subsection).
- (3) If the adult's spouse or civil partner—
- (a) is permanently separated (either by agreement or under an order of a court) from the adult; or
  - (b) has deserted, or has been deserted by, the adult and the desertion continues,
- subsection (1)(a) is to be disregarded for the purposes of subsection (1).
- (4) Relationships in different paragraphs of subsection (1) rank in the order of those paragraphs and for the purposes of that subsection (including that subsection as so applied and modified), except paragraph (e)—
- (a) a relationship of the half-blood is to be treated as a relationship of the whole blood;
  - (b) the stepchild of an adult is to be treated as the child of the adult.
- (5) Where more than one person falls within a paragraph in subsection (1), each such person ranks equally for the purpose of the paragraph; and authorisation by virtue of the paragraph in question may be given by any one of the persons falling within the paragraph.
- (6) For the purposes of subsection (1), a person's relationship with the adult is to be left out of account if—
- (a) the person, immediately before the adult's death, was under 16 years of age;
  - (b) the person does not wish or is unable to make a decision on the issue of authorisation; or
  - (c) it is not reasonably practicable to communicate with the person in the time available.

## **51 Witnesses: additional provision**

- (1) For the purpose of the requirements in sections 6(3), 8(3), 29(4), 30(4), (5), (7) and (8), 31(2)(a) and (b)(ii), 32(4), (5), (7) and (8), 33(2)(a) and (b), 34(1)(a) and (b), 42(2)(a)(ii) and (b)(ii), 43(2)(a) and (3), 44(2)(a) and (b)(ii), 45(2)(a) and (3) and 46(2)(a) and (b) for authorisation, withdrawal of authorisation, nomination or, as the case may be, withdrawal of nomination, in writing, to be witnessed—
- (a) a witness (or where 2 witnesses are required each witness)—
    - (i) must be a witness to both the signature and the content of the writing;

- (ii) must be an adult;
    - (iii) must sign the writing;
  - (b) any reference to 2 witnesses is a reference to 2 witnesses who are present at the same time.
- (2) For the purposes of the requirements in sections 29(2)(b) and (3)(b)(ii) for authorisation or, as the case may be, withdrawal of authorisation, expressed verbally, to be expressed in the presence of 2 witnesses—
- (a) each witness—
    - (i) must be a witness to the verbal expression of the authorisation or, as the case may be, the withdrawal of the authorisation;
    - (ii) must be an adult;
  - (b) the reference to 2 witnesses is a reference to 2 witnesses who are present at the same time.

## **52 Power to prescribe forms and descriptions of persons who may act as a witness**

The Scottish Ministers may by regulations prescribe—

- (a) the form in which—
  - (i) authorisation by virtue of section 30(2), 32(2) or 33(1);
  - (ii) authorisation by a person nominated in accordance with section 30(1) or 32(1),is to be given;
- (b) the form in which authorisation by virtue of section 43(1), 45(1) or 46(1) may be given;
- (c) descriptions of persons who are eligible to act as a witness in accordance with section 29(2)(b), 30(4) or (5), 31(2)(a), 32(4) or (5), 33(2)(a), 43(2)(a), 44(2)(a), 45(2)(a) or 46(2)(a).