



Human Tissue (Scotland) Act 2006

2006 asp 4

PART 1 **S**

TRANSPLANTATION ETC.

Use of part of body of deceased person for transplantation, research etc.

11 **Removal of part of body of deceased person: further requirements** **S**

- (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) a registered medical practitioner; or
 - (b) a person [^{F1}(or description of 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 [^{F2}(or description of person)] who is not such a practitioner.
- (3) The removal of part of the body of a deceased person may not be—
 - (a) 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);
 - ^{F3}(b)
- (4) The requirements are that the person ^{F4}... must be satisfied—
 - (a) [^{F5}if the person is a registered medical practitioner,] either—
 - (i) by personal examination of the body, that life is extinct; or
 - (ii) that another registered medical practitioner, by such personal examination, is so satisfied;
 - ^{F6}(ab) if the person is not a registered medical practitioner, that a registered medical practitioner, by personal examination of the body, is satisfied that life is extinct,]
 - (b) 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

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- (c) that the removal [^{F7}and use for the purpose in question] is authorised in accordance with section 6, [^{F8}6D, 6E, 6F, 6G, 6H, 8, 8D, 10 or, as the case may be, 10A].

[^{F9}(4A) For the purposes of subsection (4)(c), the person who proposes to carry out the removal is entitled to be satisfied that the removal and use for the purpose in question is authorised in accordance with the section in question if subsections (4B) and (4C) apply.

(4B) This subsection applies if the person who proposes to carry out the removal considers there to be an appropriate record that—

- (a) there is in force an authorisation by virtue of section 6, 6D, 6E, 6F, 6G, 6H, 8, 8D, 10 or, as the case may be, 10A as respects—
- (i) the deceased person, and
 - (ii) the removal and use of the part for the purpose in question,
- (b) the authorisation was given in accordance with the section in question,
- (c) there is in force—
- (i) in the case of a deceased adult, no opt-out declaration by the adult as respects removal and use of the part for the purpose in question,
 - (ii) in the case of a deceased child, no declaration by virtue of section 8B(1) by the child as respects removal and use of the part for the purpose in question,
- (d) in the case of a deceased adult who is deemed to have authorised the removal and use of a part of the adult's body for transplantation by virtue of section 6D, the deceased adult was not—
- (i) a non-resident adult, or
 - (ii) an adult incapable of understanding the nature and consequences of deemed authorisation,
- (e) a health worker has carried out inquiries—
- (i) in the case of a deceased adult, in accordance with section 16H(2), and
 - (ii) in the case of a deceased child, in accordance with section 16I(2).

(4C) This subsection applies if the person who proposes to carry out the removal has no reason to believe that—

- (a) there is in force no authorisation by virtue of section 6, 6D, 6E, 6F, 6G, 6H, 8, 8D, 10 or, as the case may be, 10A as respects—
- (i) the deceased person, or
 - (ii) the removal and use of the part for the purpose in question,
- (b) the authorisation was not given in accordance with the section in question,
- (c) in the case of an authorisation given by a person other than the deceased person, the person who gave the authorisation was not entitled to do so,
- (d) the deceased person would be unwilling in the circumstances for the part to be removed and used for the purpose in question.]

^{F10}(5)

Textual Amendments

F1 Words in s. 11(1)(b) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), ss. 22(2), 29(2); S.S.I. 2021/108, reg. 2

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- F2** Words in s. 11(2) inserted (26.3.2021) by Human Tissue (Authorisation) (Scotland) Act 2019 (asp 11), **ss. 22(3), 29(2)**; S.S.I. 2021/108, reg. 2
- F3** S. 11(3)(b) repealed (26.3.2021) by Human Tissue (Authorisation) (Scotland) Act 2019 (asp 11), **ss. 22(4), 29(2)**; S.S.I. 2021/108, reg. 2
- F4** Words in s. 11(4) repealed (26.3.2021) by Human Tissue (Authorisation) (Scotland) Act 2019 (asp 11), **ss. 22(5)(a), 29(2)**; S.S.I. 2021/108, reg. 2
- F5** Words in s. 11(4)(a) inserted (26.3.2021) by Human Tissue (Authorisation) (Scotland) Act 2019 (asp 11), **ss. 22(5)(b), 29(2)**; S.S.I. 2021/108, reg. 2
- F6** S. 11(4)(ab) inserted (26.3.2021) by Human Tissue (Authorisation) (Scotland) Act 2019 (asp 11), **ss. 22(5)(c), 29(2)**; S.S.I. 2021/108, reg. 2
- F7** Words in s. 11(4)(c) inserted (26.3.2021) by Human Tissue (Authorisation) (Scotland) Act 2019 (asp 11), **ss. 22(5)(d)(i), 29(2)**; S.S.I. 2021/108, reg. 2
- F8** Words in s. 11(4)(c) substituted (26.3.2021) by Human Tissue (Authorisation) (Scotland) Act 2019 (asp 11), **ss. 22(5)(d)(ii), 29(2)**; S.S.I. 2021/108, reg. 2
- F9** S. 11(4A)-(4C) inserted (26.3.2021) by Human Tissue (Authorisation) (Scotland) Act 2019 (asp 11), **ss. 22(6), 29(2)**; S.S.I. 2021/108, reg. 2
- F10** S. 11(5) repealed (26.3.2021) by Human Tissue (Authorisation) (Scotland) Act 2019 (asp 11), **ss. 22(7), 29(2)**; S.S.I. 2021/108, reg. 2

Commencement Information

- I1** S. 11(1)(a)(3)-(5) in force at 1.9.2006 by S.S.I. 2006/251, **art. 3**
- I2** 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.**

Changes to legislation:

There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Section 11.