



# Human Tissue (Scotland) Act 2006

## 2006 asp 4

### PART 1

#### 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**

- (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 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—
  - (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);
  - (b) 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—
  - (a) 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;
  - (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 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—
- (a) 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has no reason to believe that the authorisation was not so given or (in a case where by virtue of this Act it may be withdrawn) that it was subsequently withdrawn;
  - (b) in the case of authorisation by virtue of section 6(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 the adult;
  - (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;

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- (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;
  - (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

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- 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;
  - (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;

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- (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;
  - (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).