

Human Tissue (Authorisation) (Scotland) Act 2019

2019 asp 11

PART 3

AUTHORISATION OF REMOVAL AND USE OF PART OF BODY OF DECEASED PERSON

CHAPTER 2

AUTHORISATION BY OR ON BEHALF OF ADULT

PROSPECTIVE

10 Excepted body parts: authorisation for transplantation by nearest relative

After section 6F of the 2006 Act insert—

“6G Excepted body parts: authorisation for transplantation by nearest relative

- (1) This section applies where an adult is deemed to have authorised the removal and use of a part of the adult's body after the adult's death for transplantation by virtue of section 6D(1).
- (2) The nearest relative of the adult may authorise the removal and use of a part of the adult's body that is an excepted body part after the adult's death for transplantation where—
 - (a) there is in force at the relevant time no opt-out declaration by the adult as respects removal and use of the part for transplantation,
 - (b) the relative has no actual knowledge that—
 - (i) the adult's most recent view was that the adult was unwilling for the part to be removed and used for transplantation, or
 - (ii) if the adult were capable of making a decision about removal and use of the part, the adult would be unwilling in the

Status: *This version of this provision is prospective.*

Changes to legislation: *There are currently no known outstanding effects for the Human Tissue (Authorisation) (Scotland) Act 2019, Section 10. (See end of Document for details)*

- circumstances for the part to be removed and used for transplantation, and
- (c) the relative, having had regard to any evidence referred to in section 16H(6)(a) and (b), is satisfied that—
 - (i) the adult was not unwilling for the part to be removed and used for transplantation, and
 - (ii) if the adult were capable of making a decision about removal and use of the part, the adult would not be unwilling in the circumstances for the part to be removed and used for transplantation.
 - (3) For the purposes of subsection (2)(b) and (c), the mere fact that there is in force no express authorisation by the adult of removal and use of any part of the adult's body for transplantation is not to be regarded as unwillingness by the adult.
 - (4) An authorisation by virtue of subsection (2) must be—
 - (a) in writing and signed, or
 - (b) given orally to a health worker.
 - (5) An authorisation by virtue of subsection (2) may not be withdrawn.”.

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