



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

11 Authorisation for purpose other than transplantation by nearest relative

- (1) The 2006 Act is amended as follows.
- (2) After section 6G insert—

“6H Authorisation for purpose other than transplantation by nearest relative

- (1) The nearest relative of an adult may authorise the removal and use of a part of the adult’s body after the adult’s death for one or more of the purposes referred to in paragraphs (b) to (d) of section 3(1) where—
 - (a) there is in force at the relevant time—
 - (i) no express authorisation by the adult of removal and use of any part for the purpose in question,
 - (ii) no opt-out declaration by the adult as respects removal and use of the part for the purpose in question, and
 - (iii) 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 the purpose in question, or

Status: This is the original version (as it was originally enacted).

- (ii) if the adult were capable of making a decision about removal and use of the part, the adult would be unwilling in the circumstances for the part to be removed and used for the purpose in question, 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 the purpose in question, 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 the purpose in question.
- (2) For the purposes of subsection (1)(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 the purpose in question is not to be regarded as unwillingness by the adult.
- (3) Before giving an authorisation by virtue of subsection (1) on behalf of an adult who is incapable of understanding the nature and consequences of deemed authorisation, the nearest relative must have regard to the adult's past wishes and feelings so far as reasonably ascertainable.
- (4) An authorisation by virtue of subsection (1) must be—
 - (a) in writing and signed, or
 - (b) given orally to a health worker.
- (5) An authorisation by virtue of subsection (1) may be withdrawn by the relative.
- (6) A withdrawal by virtue of subsection (5) must be—
 - (a) in writing and signed, or
 - (b) given orally to a health worker.”.
- (3) Section 7 is repealed.