



Human Tissue (Authorisation) (Scotland) Act 2019

2019 asp 11

PART 3

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

CHAPTER 3

AUTHORISATION BY OR ON BEHALF OF CHILD

17 **Authorisation by other persons: children**

After section 10 of the 2006 Act insert—

“10A Authorisation by other persons: children

- (1) A person mentioned in subsection (4) in relation to a child who is 12 years of age or over at the relevant time may authorise the removal and use of a part of the child's body after the child's death for one or more of the purposes referred to in section 3(1) where—
- (a) each person with parental rights and parental responsibilities who would otherwise be entitled to authorise removal and use of a part of the child's body by virtue of section 8D(1) has died or become incapable of so authorising,
 - (b) there is in force at the relevant time—
 - (i) no authorisation by virtue of section 8(1) by the child of removal and use of any part for the purpose in question,
 - (ii) no declaration by virtue of section 8B(1) by the child as respects removal and use of the part for the purpose in question, and
 - (iii) if transplantation is not the purpose in question, no declaration by virtue of section 8B(1) by the child as respects removal and use of the part for transplantation,

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- (c) the person has no actual knowledge that—
 - (i) the child's most recent view was that the child was unwilling for the part to be removed and used for the purpose in question, or
 - (ii) if the child were capable of making a decision about removal and use of the part, the child would be unwilling in the circumstances for the part to be removed and used for the purpose in question, and
 - (d) the person, having had regard to any evidence referred to in section 16I(4)(a) and (b), is satisfied that—
 - (i) the child was not unwilling for the part to be removed and used for the purpose in question, and
 - (ii) the child 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)(c) and (d), the mere fact that there is in force no authorisation by virtue of section 8(1) by the child of removal and use of any part of the child's body for the purpose in question is not to be regarded as unwillingness by the child.
- (3) A person mentioned in subsection (4) in relation to a child who is under 12 years of age at the relevant time may authorise the removal and use of a part of the child's body after the child's death for one or more of the purposes referred to in section 3(1) where—
- (a) each person with parental rights and parental responsibilities who would otherwise be entitled to authorise removal and use of a part of the child's body by virtue of section 10(1) has died or become incapable of so authorising,
 - (b) the person has no actual knowledge that—
 - (i) the child's most recent view was that the child was unwilling for the part to be removed and used for the purpose in question, or
 - (ii) if the child were capable of making a decision about removal and use of the part, the child would be unwilling in the circumstances for the part to be removed and used for the purpose in question, and
 - (c) the person, having had regard to any evidence referred to in section 16I(4)(a) and (b), is satisfied that—
 - (i) the child was not unwilling for the part to be removed and used for the purpose in question, and
 - (ii) the child would not be unwilling in the circumstances for the part to be removed and used for the purpose in question.
- (4) A person who is, at the relevant time—
- (a) a person who has (or has recently had) a significant involvement in the upbringing of the child,
 - (b) the child's brother or sister,
 - (c) the child's grandparent,
 - (d) the child's uncle or aunt,
 - (e) the child's cousin,
 - (f) the child's niece or nephew,

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- (g) a friend of longstanding of the child.
- (5) An authorisation by virtue of subsection (1) or (3) must be—
 - (a) in writing and signed, or
 - (b) given orally to a health worker.
- (6) Subject to subsection (8), an authorisation by virtue of subsection (1) or (3) may be withdrawn by the person.
- (7) A withdrawal by virtue of subsection (6) must be—
 - (a) in writing and signed, or
 - (b) given orally to a health worker.
- (8) To the extent that an authorisation by virtue of subsection (1) or (3) is for the purposes of transplantation, it may not be withdrawn.
- (9) Relationships in different paragraphs of subsection (4) rank in the order of those paragraphs and for the purposes of that subsection a relationship of the half-blood is to be treated as a relationship of the whole blood.
- (10) Where more than one person falls within a paragraph in subsection (4), 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.
- (11) For the purposes of subsections (1) and (3), a person's relationship with the child is to be left out of account if—
 - (a) the person, at the relevant time, 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.”.

Commencement Information

II S. 17 in force at 26.3.2021 by [S.S.I. 2021/108](#), [reg. 2](#)

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