



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

6 Opt-out declaration by adult

After section 6A of the 2006 Act insert—

“6B Opt-out declaration: adult

- (1) An adult may make a declaration that the adult does not 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 section 3(1) (an “opt-out declaration”).
- (2) If there is in force an opt-out declaration by an adult as respects removal and use of a part of the adult’s body for a purpose referred to in section 3(1), the part must not be removed and used for that purpose.
- (3) An opt-out declaration must—
 - (a) if it is as respects transplantation, be—
 - (i) in writing, or
 - (ii) made to the register organisation orally or in writing,
 - (b) if it is as respects a purpose referred to in paragraphs (b) to (d) of section 3(1), be in writing.

6C Withdrawal of opt-out declaration: adult

- (1) An opt-out declaration may be withdrawn by the adult—

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- (a) in writing, or
 - (b) if the opt-out declaration was made to the register organisation, by giving the withdrawal to the register organisation orally or in writing.
- (2) Subsection (3) applies if—
- (a) there is in force an opt-out declaration by an adult as respects removal and use of a part of the adult’s body for a purpose referred to in section 3(1), and
 - (b) the adult gives an express authorisation of removal and use of the part for that purpose.
- (3) The opt-out declaration—
- (a) is treated as withdrawn by the adult to the extent that it relates to removal and use of the part for that purpose, and
 - (b) otherwise remains in force.
- (4) Subsections (5) to (7) apply if—
- (a) there is in force at the relevant time an opt-out declaration by an adult as respects removal and use of a part of the adult’s body for a purpose referred to in section 3(1), and
 - (b) a person provides evidence to a health worker that would lead a reasonable person to conclude that—
 - (i) the adult’s most recent view was that the adult was willing for the part to be removed and used for that purpose, or
 - (ii) if the adult were capable of making a decision about removal and use of the part, the adult would be willing in the circumstances for the part to be removed and used for that purpose.
- (5) The opt-out declaration—
- (a) is treated as withdrawn by the adult to the extent that it relates to removal and use of the part for that purpose,
 - (b) otherwise remains in force, and
 - (c) to the extent that it remains in force, is treated as being in force at the relevant time for the purposes of—
 - (i) section 6D(1)(b),
 - (ii) section 6E(1)(a)(ii),
 - (iii) section 6F(1)(a)(ii),
 - (iv) section 6G(2)(a),
 - (v) section 6H(1)(a)(ii) and (iii),
 - (vi) section 16H(2)(a)(ii),
 - (vii) section 16H(3)(b).
- (6) The adult is treated as having given an express authorisation by virtue of section 6(1) of removal and use of the part for that purpose.
- (7) The authorisation referred to in subsection (6) is treated as being in force at the relevant time for the purposes of—
- (a) section 6D(1)(a),
 - (b) section 6E(1)(a)(i),
 - (c) section 6F(1)(a)(i),

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- (d) section 6H(1)(a)(i),
- (e) section 16F(1)(d),
- (f) section 16H(2)(a)(i),
- (g) section 16H(3)(a).”.