



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

7 Deemed authorisation for transplantation as respects adult

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

“6D Deemed authorisation for transplantation: adult

- (1) 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 where there is in force at the relevant time—
 - (a) no express authorisation by the adult of removal and use of any part of the adult’s body for transplantation, and
 - (b) no opt-out declaration by the adult as respects removal and use of the part of the adult’s body for transplantation.
- (2) Subsection (1) does not apply in relation to—
 - (a) a person who was not ordinarily resident in Scotland for a period of at least 12 months ending immediately before the relevant time (a “non-resident adult”),
 - (b) an adult who is incapable of understanding the nature and consequences of deemed authorisation,
 - (c) an excepted body part,

Status: This is the original version (as it was originally enacted).

- (d) a part of the adult’s body (that is not an excepted body part), if 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 unwilling for the part to be 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 circumstances for the part to be used for transplantation.
- (3) In this Part, an adult is incapable of understanding the nature and consequences of deemed authorisation if, over a significant period ending immediately before the relevant time, the person was incapable of understanding—
 - (a) that an adult may be deemed to have authorised removal and use of a part of the adult’s body after the adult’s death for transplantation, and
 - (b) that if authorisation is so deemed, after the adult’s death part of the adult’s body may be removed from the body and used for transplantation.
- (4) An example of when an adult is to be considered “incapable of understanding the nature and consequences of deemed authorisation” is if there is evidence available to a health worker, including any evidence referred to in section 16H(4), that would lead a reasonable person to conclude that the adult is so incapable.
- (5) An “excepted body part” is a part of the body specified in regulations made by the Scottish Ministers.
- (6) Before laying draft regulations under subsection (5) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.”.
- (3) In section 59(3) (regulations subject to affirmative procedure), after paragraph (aa) insert—
 - “(ab) regulations under section 6D(5);”.