



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

9 Adult incapable of understanding deemed authorisation: authorisation for transplantation by nearest relative

After section 6E of the 2006 Act insert—

“6F Adult incapable of understanding deemed authorisation: authorisation for transplantation by nearest relative

- (1) The nearest relative of an adult who is incapable of understanding the nature and consequences of deemed authorisation may authorise the removal and use of a part of the adult’s body after the adult’s death for transplantation where—
 - (a) there is in force at the relevant time—
 - (i) no express authorisation by the adult of removal and use of any part of the adult’s body for transplantation, and
 - (ii) 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 circumstances for the part to be removed and used for transplantation, and

Status: This is the original version (as it was originally enacted).

- (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.
- (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 transplantation is not to be regarded as unwillingness by the adult.
- (3) Before giving an authorisation by virtue of subsection (1), 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- (5) An authorisation by virtue of subsection (1) may not be withdrawn.”.