Human Tissue (Scotland) Act 2006

2006 asp 4

PART 1

TRANSPLANTATION ETC.

Use of part of body of deceased person for transplantation, research etc.

9 Authorisation as respects child who dies 12 years of age or over by person with parental rights and responsibilities

(1) If there is in force immediately before the death of a child who died 12 years of age or over no authorisation by the child by virtue of section 8(1) of removal and use of any part of the child's body for transplantation, a person who, immediately before the death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority) may, subject to subsection (4), authorise removal and use of any part for one or more of the purposes referred to in section 3(1).

(2) If—

(a) there is in force immediately before the death of a child who died 12 years of age or over authorisation by the child by virtue of section 8(1) of removal and use of a part of the child's body for transplantation;

(b) the authorisation does not expressly include removal and use of the part for a particular purpose referred to in paragraphs (b) to (d) of section 3(1),

a person who, immediately before the death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority) may, subject to subsection (4), authorise the removal and use of the part for the particular purpose in question which is not included in the authorisation.

(3) If—

(a) there is in force immediately before the child's death authorisation by the child by virtue of section 8(1) of removal and use of a particular part of the child's body for transplantation;

(b) the authorisation does not expressly include removal and use of another particular part,

a person who, immediately before the death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority) may, subject

to subsection (4), authorise the removal and use of the other particular part which is not so included for one or more of the purposes referred to in paragraphs (b) to (d) of section 3(1).

(4) A person may not give authorisation under—

(a) subsection (1) if the person has actual knowledge that the child was unwilling for any part of the child's body, or the part in question, to be used for transplantation;

(b) subsection (2) if the person has actual knowledge that the child was unwilling for the part to be used for the purpose in question;

(c) subsection (3) if the person has actual knowledge that the child was unwilling for any other part of the child's body or, as the case may be, the other particular part in question, to be used for transplantation.

(5) For the purposes of—

(a) subsection (4)(a), the mere fact that there is no authorisation by the child in force is not to be regarded as unwillingness by the child referred to in that subsection;

(b) subsection (4)(b), the mere fact that the authorisation by the child does not include a particular purpose referred to in paragraphs (b) to (d) of section 3(1) is not to be regarded as unwillingness by the child referred to in that subsection;

(c) subsection (4)(c), the mere fact that there is no authorisation by the child in force as respects the removal and use of other parts, or the other particular part in question, for transplantation is not to be regarded as unwillingness by the child as referred to in that subsection.

(6) Authorisation by virtue of subsection (1), (2) or (3)—

(a) must be—

(i) in writing and signed; or

(ii) expressed verbally,

by the person who gives the authorisation in accordance with that subsection;

(b) subject to subsection (7), may be withdrawn in writing signed by the person.

(7) To the extent that authorisation by virtue of subsection (1) is for the purposes of transplantation, it may not be withdrawn.