

# Human Tissue (Authorisation) (Scotland) Act 2019

2019 asp 11

## PART 3

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

PROSPECTIVE

## CHAPTER 3

### AUTHORISATION BY OR ON BEHALF OF CHILD

#### **13 Authorisation by child 12 years of age or over**

(1) The 2006 Act is amended as follows.

(2) After section 8(1) insert—

“(1A) An authorisation by virtue of subsection (1) must—

(a) if it is for transplantation, be—

(i) in writing, or

(ii) given to the register organisation orally or in writing,

(b) if it is for a purpose referred to in paragraphs (b) to (d) of section 3(1), be in writing.

(1B) If there is in force immediately before a child becomes an adult an authorisation by virtue of subsection (1) by the child, the authorisation is to be treated as an express authorisation by virtue of section 6(1) once the child becomes an adult.”.

(3) Section 8(2) is repealed.

(4) After section 8 insert—

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*Status: This version of this chapter contains provisions that are prospective.*  
**Changes to legislation:** *There are currently no known outstanding effects for the Human Tissue (Authorisation) (Scotland) Act 2019, Chapter 3. (See end of Document for details)*

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### **“8A Withdrawal of authorisation: child 12 years of age or over**

- (1) An authorisation by virtue of section 8(1) may be withdrawn by the child—
  - (a) in writing, or
  - (b) if the authorisation was given 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 authorisation by virtue of section 8(1) by a child of removal and use of a part of the child's body for a purpose referred to in section 3(1), and
  - (b) the child makes a declaration by virtue of section 8B(1) as respects removal and use of the part for that purpose.
- (3) The authorisation by virtue of section 8(1)—
  - (a) is treated as withdrawn by the child to the extent that it relates to removal and use of the part for that purpose, and
  - (b) otherwise remains in force.
- (4) Subsection (5) applies if—
  - (a) there is in force at the relevant time an authorisation by virtue of section 8(1) by a child of removal and use of a part of the child'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 child's most recent view was that the child was unwilling for the part to be removed and used for that purpose, 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 that purpose.
- (5) The authorisation by virtue of section 8(1)—
  - (a) is treated as withdrawn by the child 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 8D(1)(a)(i),
    - (ii) section 16F(1)(e),
    - (iii) section 16I(2)(a)(i).”.

### **14 Opt-out declaration by child 12 years of age or over**

After section 8A of the 2006 Act insert—

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### **“8B Opt-out declaration: child 12 years of age or over**

- (1) A child who is 12 years of age or over may make a declaration that the child does not 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).
- (2) If there is in force a declaration by virtue of subsection (1) by a child as respects removal and use of a part of the child's body for a purpose referred to in section 3(1), the part must not be removed and used for that purpose.
- (3) A declaration by virtue of subsection (1) 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.
- (4) If there is in force immediately before a child becomes an adult a declaration by virtue of subsection (1) by the child, the declaration is to be treated as an opt-out declaration by virtue of section 6B(1) once the child becomes an adult.

### **8C Withdrawal of opt-out declaration: child 12 years of age or over**

- (1) A declaration by virtue of section 8B(1) may be withdrawn by the child—
  - (a) in writing, or
  - (b) if the 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 a declaration by virtue of section 8B(1) by a child as respects removal and use of a part of the child's body for a purpose referred to in section 3(1), and
  - (b) the child gives an authorisation by virtue of section 8(1) of removal and use of the part for that purpose.
- (3) The declaration by virtue of section 8B(1)—
  - (a) is treated as withdrawn by the child 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 a declaration by virtue of section 8B(1) by a child as respects removal and use of a part of the child'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 child's most recent view was that the child was willing for the part to be removed and used for that purpose, or
    - (ii) if the child were capable of making a decision about removal and use of the part, the child would be willing in the

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circumstances for the part to be removed and used for that purpose.

- (5) The declaration by virtue of section 8B(1)—
  - (a) is treated as withdrawn by the child 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 8D(1)(a)(ii) and (iii),
    - (ii) section 16I(2)(a)(ii).
- (6) The child is treated as having authorised removal and use of the part for that purpose by virtue of section 8(1).
- (7) The authorisation referred to in subsection (6) is treated as being in force at the relevant time for the purposes of—
  - (a) section 8D(1)(a)(i),
  - (b) section 16F(1)(e),
  - (c) section 16I(2)(a)(i).”.

## **15 Authorisation by person with parental rights and responsibilities: child 12 years of age or over**

- (1) The 2006 Act is amended as follows.
- (2) After section 8C insert—

### **“8D Authorisation by person with parental rights and responsibilities: child 12 years of age or over**

- (1) A person who, at the relevant time, has parental rights and parental responsibilities in relation to a child who is 12 years of age or over 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) 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,
  - (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

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- 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) if the child were capable of making a decision about removal and use of the part, 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)(b) and (c), 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) An authorisation by virtue of subsection (1) must be—
- (a) in writing and signed, or
  - (b) given orally to a health worker.
- (4) Subject to subsection (6), an authorisation by virtue of subsection (1) may be withdrawn by the person who gave the authorisation.
- (5) A withdrawal by virtue of subsection (4) must be—
- (a) in writing and signed, or
  - (b) given orally to a health worker.
- (6) To the extent that an authorisation by virtue of subsection (1) is for the purposes of transplantation, it may not be withdrawn.”.
- (3) Section 9 is repealed.

## **16 Authorisation by person with parental rights and responsibilities: child under 12 years of age**

- (1) Section 10 of the 2006 Act is amended as follows.
- (2) In subsection (1), after “section 3(1)” insert “where—
- (a) 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
  - (b) 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”.

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(3) After subsection (1), insert—

“(1A) An authorisation by virtue of subsection (1) must be—

- (a) in writing and signed, or
- (b) given orally to a health worker.

(1B) Subject to subsection (3), an authorisation by virtue of subsection (1) may be withdrawn by the person.

(1C) A withdrawal by virtue of subsection (1B) must be—

- (a) in writing and signed, or
- (b) given orally to a health worker.”.

(4) Subsection (2) is repealed.

## **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,
- (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

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- (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,
  - (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.

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- (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.”.

## **18 Functions of local authority with parental rights and responsibilities**

- (1) The 2006 Act is amended as follows.
- (2) In section 10(1), the words “(but who is not a local authority)” are repealed.
- (3) After section 10A insert—

### **“10B Local authority with parental rights and responsibilities in relation to child: consultation**

- (1) Subsection (2) applies if—
  - (a) there is in force at the relevant time—
    - (i) an authorisation by virtue of section 8(1) by a child of removal and use of a part of the child's body for a purpose referred to in section 3(1), or
    - (ii) a declaration by virtue of section 8B(1) by a child as respects removal and use of a part of the child's body for a purpose referred to in section 3(1), and
  - (b) a local authority with parental rights and parental responsibilities in relation to the child is consulted about the child's most recent views by a health worker by virtue of section 16I(2)(b).
- (2) The local authority must, in so far as it is reasonably practicable to do so, ascertain the child's most recent views by consulting—
  - (a) the child's parents, and
  - (b) such other persons as the local authority considers appropriate.
- (3) Subsections (4) and (5) apply if a local authority with parental rights and parental responsibilities in relation to a child is deciding whether to give authorisation by virtue of section 8D or 10 as respects the child.



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- (4) The local authority must, in so far as it is reasonably practicable to do so, ascertain the views of—
- (a) the child,
  - (b) the child's parents, and
  - (c) any other person whose views the local authority considers to be relevant.
- (5) The local authority must have regard to the views of—
- (a) the child,
  - (b) the child's parents, and
  - (c) any other person whose views the local authority considers to be relevant.”.

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