

HUMAN TISSUE (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 2: Post-Mortem Examinations

Section 35 – Post-mortem examination and removal and retention of organs: further requirements

94. Subsection (1) provides that a person cannot carry out a post-mortem examination nor can they remove, retain or use any organs for any of the purposes specified in section 28(2)(a) (audit, education, training or research) unless they have satisfied themselves that it has been duly authorised in accordance with the relevant section and, as regards the carrying out of the examination, the consent of the procurator fiscal has been given where required.
95. Subsection (3) provides that the person intending to carry out the post-mortem examination or any other activity referred to in subsection (1) is entitled to be satisfied that the relevant authorisation is in place in certain specified circumstances. The authorisation forms which will be prescribed by regulations under section 47 will be adapted to make sure they reflect each of the requirements which are set out in this subsection in relation to written authorisations.
96. Paragraph (a) applies to both written and verbal authorisations under Part 2 of the Act. Paragraphs (b), (d), (e), (g) and (h) all relate to written authorisations under various provisions in Part 2. Paragraph (f) relates to written authorisation which has been signed by an adult under section 31(1) on behalf of a child who is 12 years of age or over and who is blind or unable to write. These paragraphs reflect the fact that the person proposing to carry out the activity will need to know when it is acceptable for them to proceed, in the light of the fact that, under section 37, an offence will be committed if the activity is not authorised by the relevant provision in Part 2.
97. Paragraph (c) relates to verbal authorisation by an adult under section 29(1). In such cases, there requires to be what the person proposing to carry out the activity considers to be an appropriate record of the authorisation by the adult. The person is also entitled to be satisfied that the removal is authorised in accordance with section 29(1) if the verbal authorisation bears from the record to be as respects the deceased adult, to authorise the activity (and to authorise the purpose in certain cases) and to have been expressed verbally by the adult in the presence of two adult witnesses. Again, this provision reflects the fact that the person proposing to carry out the activity will need to know when it is safe for them to proceed, in light of the offence provisions. What is or is not an appropriate record of the verbal authorisation is a matter to be determined by the person proposing to carry out the activity. “Appropriate record” is not defined for the purposes of this provision, to avoid being too prescriptive and thereby allow for advancing technology over time in relation to recording devices.