

HUMAN TISSUE (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 4: Parts 1 to 3: Supplementary Provision

Section 50 – Nearest relative

118. **Section 50** sets out the arrangements for determining the person's nearest relative, who may provide authorisation where appropriate. The hierarchy is very similar to that included in recent mental health legislation (Mental Health (Care and Treatment) (Scotland) Act 2003). Subsection (1) provides who may be the nearest relative of a deceased adult for the purpose of sections 7 (Part 1) and 30 (Part 2). Subsection (2) provides that, in relation to authorisation by the nearest relative of a deceased adult under section 43 (Part 3) in the context of tissue sample or organs no longer required for the purposes of the fiscal, there is an addition to the hierarchy of someone who had a longstanding professional relationship with the adult. Subsection (3) prevents an adult's spouse or civil partner from being able to give authorisation in terms of the nearest relative hierarchy if they are permanently separated or have deserted, or been deserted by, their partner at the time their partner dies. Subsection (4) provides that the relationships listed in the different paragraphs of subsection (1) rank in the order of those paragraphs. Subsection (5) provides that relatives at the same level in the nearest relative hierarchy in subsection (1) will have the same equal status in terms of giving authorisation under sections 7, 30 or 43. Subsection (6) sets out the circumstances in which a person's relationship with the deceased adult is to be left out of account.