



Human Tissue (Scotland) Act 2006

2006 asp 4

PART 1

TRANSPLANTATION ETC.

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

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

- (1) Part of the body of a deceased person may be removed from the body and used, for the purposes of—
- transplantation;
 - research;
 - education or training;
 - audit [^{F1}or quality assurance],
- only if the requirements of subsection (2) are satisfied as respects the part.
- (2) The requirements are that—
- the removal and use for the purpose in question are authorised in accordance with section 6, [^{F2}6D, 6E, 6F, 6G, 6H, 8, 8D, 10 or, as the case may be, 10A]; and
 - the removal is carried out in accordance with section 11.

Textual Amendments

- F1** Words in s. 3(1)(d) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), [ss. 21, 29\(2\)](#); [S.S.I. 2021/108](#), [reg. 2](#)
- F2** Words in s. 3(2)(a) substituted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), [ss. 28\(3\)\(a\)](#), [29\(2\)](#); [S.S.I. 2021/108](#), [reg. 2](#)

Commencement Information

- I1** S. 3 in force at 1.9.2006 by [S.S.I. 2006/251](#), [art. 3](#)

*Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross
Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)*

4 Disapplication of sections 3, 6 to 11 and 16 in certain circumstances

Sections 3, 6 to 11 and 16 do not apply—

- (a) to anything done for the purposes of the functions or under the authority of the procurator fiscal;
- (b) in relation to the removal of any part of the body of a deceased person during a post-mortem examination of the body or the subsequent retention and use of the part or in relation to retention and use of a part of a body to which section 36 applies;
- (c) in relation to retention and use of tissue sample to which section 38 or 47 applies or an organ to which section 40 or 48 applies;
- (d) as respects the removal, retention or use of any part of a body of a deceased person if it is the body of a person who died before the day on which section 3 comes into force and at least 100 years have elapsed since the date of the person's death.

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Commencement Information
I2 S. 4 in force at 1.9.2006 by [S.S.I. 2006/251](#), [art. 3](#)

5 Consent by procurator fiscal to removal of part of body

- (1) Where a person knows, or has reason to believe, that an examination of the body of a deceased person is, or may be, required for the purposes of the functions of the procurator fiscal, the person may not, except with the consent of the procurator fiscal, remove from the body any part of it, or authorise such removal, for a purpose referred to in section 3(1).
- (2) For the purposes of subsection (1), consent by the procurator fiscal may be given verbally and if so given is to be confirmed in writing as soon as is reasonably practicable.

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Commencement Information
I3 S. 5 in force at 1.9.2006 by [S.S.I. 2006/251](#), [art. 3](#)

6 [F3Express authorisation: adult]

- (1) An adult may authorise the removal and use of a part of the adult's body after the adult's death for one or more of the purposes referred to in section 3(1) [F4(an “express authorisation”)].

[F5(1A) An express authorisation 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.]

[F6(2).....

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

- F⁷(3)
- F⁷(4)
- F⁷(5)
- F⁸(6)

Textual Amendments

- F3** S. 6 title substituted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 5(3), 29(2)**; [S.S.I. 2021/108](#), reg. 2
- F4** Words in s. 6(1) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 5(2)(a), 29(2)**; [S.S.I. 2021/108](#), reg. 2
- F5** S. 6(1A) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 5(2)(b), 29(2)**; [S.S.I. 2021/108](#), reg. 2
- F6** S. 6(2) repealed (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 5(2)(c), 29(2)**; [S.S.I. 2021/108](#), reg. 2
- F7** S. 6(3)-(5) repealed (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 20(3), 29(2)**; [S.S.I. 2021/108](#), reg. 2
- F8** S. 6(6) repealed (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 27(5)(a), 29(2)**; [S.S.I. 2021/108](#), reg. 2

Commencement Information

- I4** S. 6 in force at 1.9.2006 by [S.S.I. 2006/251](#), **art. 3**

[^{F9}6A] **Withdrawal of express authorisation: adult**

- (1) An express authorisation may be withdrawn by the adult—
- in writing, or
 - if the express authorisation was given to the register organisation, by giving the withdrawal to the register organisation orally or in writing.
- (2) Subsection (3) applies if—
- there is in force an express authorisation by an adult of removal and use of a part of the adult's body for a purpose referred to in section 3(1), and
 - the adult makes an opt-out declaration as respects removal and use of the part for that purpose.
- (3) The express authorisation—
- is treated as withdrawn by the adult to the extent that it relates to removal and use of the part for that purpose, and
 - otherwise remains in force.
- (4) Subsection (5) applies if—
- there is in force at the relevant time an express authorisation by an adult of removal and use of a part of the adult's body for a purpose referred to in section 3(1), and
 - a person provides evidence to a health worker that would lead a reasonable person to conclude that—
 - the adult's most recent view was that the adult was unwilling for the part to be removed and used for that purpose, or

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- (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 that purpose.
- (5) The express authorisation—
- (a) is treated as withdrawn by the adult 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 6D(1)(a),
 - (ii) section 6E(1)(a)(i),
 - (iii) section 6F(1)(a)(i),
 - (iv) section 6H(1)(a)(i),
 - (v) section 16F(1)(d),
 - (vi) section 16H(2)(a)(i),
 - (vii) section 16H(3)(a).]

Textual Amendments

F9 S. 6A inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 5(4)**, 29(2); [S.S.I. 2021/108](#), reg. 2

[^{F10}6B Opt-out declaration: adult

- (1) An adult may make a declaration that the adult does not authorise the removal and use of a part of the adult's body after the adult's death for one or more of the purposes referred to in section 3(1) (an “opt-out declaration”).
- (2) If there is in force an opt-out declaration by an adult as respects removal and use of a part of the adult's body for a purpose referred to in section 3(1), the part must not be removed and used for that purpose.
- (3) An opt-out declaration 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.

Textual Amendments

F10 Ss. 6B, 6C inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 6**, 29(2); [S.S.I. 2021/108](#), reg. 2

6C Withdrawal of opt-out declaration: adult

- (1) An opt-out declaration may be withdrawn by the adult—
 - (a) in writing, or

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross
Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

- (b) if the opt-out 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 an opt-out declaration by an adult as respects removal and use of a part of the adult's body for a purpose referred to in section 3(1), and
 - (b) the adult gives an express authorisation of removal and use of the part for that purpose.
- (3) The opt-out declaration—
- (a) is treated as withdrawn by the adult 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 an opt-out declaration by an adult as respects removal and use of a part of the adult'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 adult's most recent view was that the adult was willing for the part to be removed and used for that purpose, or
 - (ii) if the adult were capable of making a decision about removal and use of the part, the adult would be willing in the circumstances for the part to be removed and used for that purpose.
- (5) The opt-out declaration—
- (a) is treated as withdrawn by the adult 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 6D(1)(b),
 - (ii) section 6E(1)(a)(ii),
 - (iii) section 6F(1)(a)(ii),
 - (iv) section 6G(2)(a),
 - (v) section 6H(1)(a)(ii) and (iii),
 - (vi) section 16H(2)(a)(ii),
 - (vii) section 16H(3)(b).
- (6) The adult is treated as having given an express authorisation by virtue of section 6(1) of removal and use of the part for that purpose.
- (7) The authorisation referred to in subsection (6) is treated as being in force at the relevant time for the purposes of—
- (a) section 6D(1)(a),
 - (b) section 6E(1)(a)(i),
 - (c) section 6F(1)(a)(i),
 - (d) section 6H(1)(a)(i),
 - (e) section 16F(1)(d),
 - (f) section 16H(2)(a)(i),

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

(g) section 16H(3)(a).]

Textual Amendments

F10 Ss. 6B, 6C inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), ss. 6, 29(2); S.S.I. 2021/108, reg. 2

[^{F11}6D Deemed authorisation for transplantation: adult

- (1) An adult is deemed to have authorised the removal and use of a part of the adult's body after the adult's death for transplantation where there is in force at the relevant time—
 - (a) no express authorisation by the adult of removal and use of any part of the adult's body for transplantation, and
 - (b) no opt-out declaration by the adult as respects removal and use of the part of the adult's body for transplantation.
- (2) Subsection (1) does not apply in relation to—
 - (a) a person who was not ordinarily resident in Scotland for a period of at least 12 months ending immediately before the relevant time (a “non-resident adult”),
 - (b) an adult who is incapable of understanding the nature and consequences of deemed authorisation,
 - (c) an excepted body part,
 - (d) a part of the adult's body (that is not an excepted body part), if a person provides evidence to a health worker that would lead a reasonable person to conclude that—
 - (i) the adult's most recent view was that the adult was unwilling for the part to be 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 used for transplantation.
- (3) In this Part, an adult is incapable of understanding the nature and consequences of deemed authorisation if, over a significant period ending immediately before the relevant time, the person was incapable of understanding—
 - (a) that an adult may be deemed to have authorised removal and use of a part of the adult's body after the adult's death for transplantation, and
 - (b) that if authorisation is so deemed, after the adult's death part of the adult's body may be removed from the body and used for transplantation.
- (4) An example of when an adult is to be considered “incapable of understanding the nature and consequences of deemed authorisation” is if there is evidence available to a health worker, including any evidence referred to in section 16H(4), that would lead a reasonable person to conclude that the adult is so incapable.
- (5) An “excepted body part” is a part of the body specified in regulations made by the Scottish Ministers.
- (6) Before laying draft regulations under subsection (5) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.]

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

Textual Amendments

F11 S. 6D inserted (11.10.2019 for specified purposes, 26.3.2021 in so far as not already in force) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 7(2), 29(2)**; [S.S.I. 2019/305](#), [reg. 2\(b\)](#); [S.S.I. 2021/108](#), [reg. 2](#)

[^{F12}6E **Non-resident adult: authorisation for transplantation by nearest relative**

- (1) The nearest relative of a non-resident adult 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
 - (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) An authorisation by virtue of subsection (1) must be—
 - (a) in writing and signed, or
 - (b) given orally to a health worker.
- (4) An authorisation by virtue of subsection (1) may not be withdrawn.]

Textual Amendments

F12 S. 6E inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 8, 29(2)**; [S.S.I. 2021/108](#), [reg. 2](#)

[^{F13}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—

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

- (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
 - (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.]

Textual Amendments

F13 S. 6F inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 9**, 29(2); [S.S.I. 2021/108](#), reg. 2

[^{F14}6G **Excepted body parts: authorisation for transplantation by nearest relative**

- (1) This section applies where an adult is deemed to have authorised the removal and use of a part of the adult's body after the adult's death for transplantation by virtue of section 6D(1).
- (2) The nearest relative of the adult may authorise the removal and use of a part of the adult's body that is an excepted body part after the adult's death for transplantation where—
 - (a) there is in force at the relevant time 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

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross
Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

- (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
 - (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.
- (3) For the purposes of subsection (2)(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.
- (4) An authorisation by virtue of subsection (2) must be—
 - (a) in writing and signed, or
 - (b) given orally to a health worker.
- (5) An authorisation by virtue of subsection (2) may not be withdrawn.]

Textual Amendments

F14 S. 6G inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 10**, 29(2); [S.S.I. 2021/108](#), reg. 2

[^{F15}6H Authorisation for purpose other than transplantation by nearest relative

- (1) The nearest relative of an adult may authorise the removal and use of a part of the adult's body after the adult's death for one or more of the purposes referred to in paragraphs (b) to (d) of section 3(1) where—
 - (a) there is in force at the relevant time—
 - (i) no express authorisation by the adult of removal and use of any part for the purpose in question,
 - (ii) no opt-out declaration by the adult as respects removal and use of the part for the purpose in question, and
 - (iii) 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 the purpose in question, 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 the purpose in question, and
 - (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 the purpose in question, and

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

- (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 the purpose in question.
- (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 the purpose in question is not to be regarded as unwillingness by the adult.
- (3) Before giving an authorisation by virtue of subsection (1) on behalf of an adult who is incapable of understanding the nature and consequences of deemed authorisation, 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 be withdrawn by the relative.
- (6) A withdrawal by virtue of subsection (5) must be—
 - (a) in writing and signed, or
 - (b) given orally to a health worker.]

Textual Amendments

F15 S. 6H inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), ss. **11(2)**, [29\(2\)](#); [S.S.I. 2021/108](#), reg. 2

[^{F16}6I] **Review of section 1(1)(d) and (e) and sections 6(1A), 6B and 6D**

- (1) The Scottish Ministers must, as soon as practicable after the end of the 5 year period—
 - (a) carry out a review of—
 - (i) the Scottish Ministers' duty under section 1(1)(d) and (e), and
 - (ii) the operation of sections 6(1A), 6B and 6D,
 - (b) set out the conclusions of the review in a report, and
 - (c) publish the report.
- (2) The report must in particular set out—
 - (a) the objectives intended to be achieved by section 6D,
 - (b) an assessment of the extent to which those objectives have been achieved, and
 - (c) an assessment of—
 - (i) the support in relation to donation for transplantation provided to relatives of persons who have authorised, or who have been deemed to have authorised, the removal of a part of the person's body for transplantation (both before and after transplantation), and
 - (ii) whether further support should be provided.
- (3) In subsection (1), “the 5 year period” means the period of 5 years beginning with the day on which sections 5 to 7 of the Human Tissue (Authorisation) (Scotland) Act 2019 come fully into force.]

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

Textual Amendments

F16 S. 6I inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 12**, 29(2); [S.S.I. 2021/108](#), reg. 2

F177 Authorisation by adult's nearest relative

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Textual Amendments

F17 S. 7 repealed (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 11(3)**, 29(2); [S.S.I. 2021/108](#), reg. 2

8 Authorisation: child 12 years of age or over

(1) 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).

[**F18**(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.]

F19(2)

F20(3)

F20(4)

F20(5)

F20(6)

F21(7)

Textual Amendments

F18 S. 8(1A)(1B) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 13(2)**, 29(2); [S.S.I. 2021/108](#), reg. 2

F19 S. 8(2) repealed (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 13(3)**, 29(2); [S.S.I. 2021/108](#), reg. 2

F20 S. 8(3)-(6) repealed (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 20(4)**, 29(2); [S.S.I. 2021/108](#), reg. 2

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

F21 S. 8(7) repealed (26.3.2021) by Human Tissue (Authorisation) (Scotland) Act 2019 (asp 11), ss. 27(5)(b), 29(2); S.S.I. 2021/108, reg. 2

Commencement Information

I5 S. 8 in force at 1.9.2006 by S.S.I. 2006/251, art. 3

[^{F22}**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).]

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross
Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

Textual Amendments

F22 S. 8A inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 13(4)**, 29(2); [S.S.I. 2021/108](#), reg. 2

[^{F23}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.

Textual Amendments

F23 Ss. 8B, 8C inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 14**, 29(2); [S.S.I. 2021/108](#), reg. 2

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—

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

- (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 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).]

Textual Amendments

F23 Ss. 8B, 8C inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 14, 29(2)**; [S.S.I. 2021/108, reg. 2](#)

[^{F24}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—

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross
Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

- (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) 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.]

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Textual Amendments

F24 S. 8D inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\), ss. 15\(2\), 29\(2\); S.S.I. 2021/108, reg. 2](#)

F25⁹ **Authorisation as respects child who dies 12 years of age or over by person with parental rights and responsibilities**

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Textual Amendments

F25 S. 9 repealed (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\), ss. 15\(3\), 29\(2\); S.S.I. 2021/108, reg. 2](#)

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

10 [^{F26} **Authorisation by person with parental rights and responsibilities: child under 12 years of age**]

[^{F27}(A1) Subsection (1) applies in relation to a child who is under 12 years of age at the relevant time.]

(1) A person who [^{F28} at the relevant time has] parental rights and parental responsibilities in relation to the child ^{F29}... may authorise removal and use of a part of the body of the child for one or more of the purposes referred to in section 3(1) [^{F30} 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].

[^{F31}(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.]

^{F32}(2)

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

Textual Amendments

F26 S. 10 title substituted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 4(6)**, 29(2); S.S.I. 2021/108, reg. 2

F27 S. 10(A1) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 4(5)(a)**, 29(2); S.S.I. 2021/108, reg. 2

F28 Words in s. 10(1) substituted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 4(5)(b)**, 29(2); S.S.I. 2021/108, reg. 2

F29 Words in s. 10(1) repealed (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 18(2)**, 29(2); S.S.I. 2021/108, reg. 2

F30 Words in s. 10(1) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 16(2)**, 29(2); S.S.I. 2021/108, reg. 2

F31 S. 10(1A)-(1C) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 16(3)**, 29(2); S.S.I. 2021/108, reg. 2

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross
Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

F32 S. 10(2) repealed (26.3.2021) by Human Tissue (Authorisation) (Scotland) Act 2019 (asp 11), ss. 16(4), 29(2); S.S.I. 2021/108, reg. 2

Commencement Information

I6 S. 10 in force at 1.9.2006 by S.S.I. 2006/251, art. 3

[^{F33}**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
 - (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

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross
 Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

- (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.
- (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.]

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

Textual Amendments

F33 S. 10A inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), ss. 17, 29(2); S.S.I. 2021/108, reg. 2

[^{F34}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.
- (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.]

Textual Amendments

F34 S. 10B inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), ss. 18(3), 29(2); S.S.I. 2021/108, reg. 2

[^{F35}10C Power to make provision about decisions

- (1) The Scottish Ministers may by regulations make provision about the manner in which, or to whom—
 - (a) an express authorisation by virtue of section 6(1) may be given,

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

- (b) an opt-out declaration by virtue of section 6B(1) may be made,
- (c) an authorisation by virtue of section 8(1) may be given,
- (d) a declaration by virtue of section 8B(1) may be made,
- (e) an authorisation by virtue of section 16F(1) may be given.

(2) Regulations under subsection (1) may modify this Act.]

Textual Amendments

F35 S. 10C inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), ss. **19(2)**, 29(2); S.S.I. 2021/108, reg. 2

[^{F36}10D **Withdrawal by person who is blind or unable to write**

- (1) This section applies where a person who is blind or unable to write decides to withdraw—
- (a) an authorisation by virtue of—
 - (i) section 6A(1),
 - (ii) section 6H(5),
 - (iii) section 8A(1),
 - (iv) section 8D(4),
 - (v) section 10(1B),
 - (vi) section 10A(6),
 - (b) a declaration by virtue of—
 - (i) section 6C(1),
 - (ii) section 8C(1).
- (2) The withdrawal may be—
- (a) in writing by another person, and
 - (b) signed by an adult (a “signatory”).
- (3) A withdrawal that is signed by a signatory must—
- (a) be witnessed by one witness, and
 - (b) contain a statement made in accordance with subsection (4).
- (4) The statement must—
- (a) state that the person, in the presence of the signatory and the witness, expressed the intention to withdraw the authorisation or, as the case may be, the declaration,
 - (b) state that the person requested the signatory to sign the withdrawal,
 - (c) be signed by the signatory and the witness in the presence of—
 - (i) each other, and
 - (ii) the person.]

Textual Amendments

F36 S. 10D inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), ss. **20(2)**, 29(2); S.S.I. 2021/108, reg. 2

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross
Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

11 Removal of part of body of deceased person: further requirements

- (1) The removal of a part of the body of a deceased person for any of the purposes referred to in section 3(1) may be carried out only by—
- (a) a registered medical practitioner; or
 - (b) a person [^{F37}(or description of person)] authorised to do so in accordance with regulations made by the Scottish Ministers.
- (2) Regulations under subsection (1)(b) may in particular provide for a registered medical practitioner to authorise the carrying out of the removal by a person [^{F38}(or description of person)] who is not such a practitioner.
- (3) The removal of part of the body of a deceased person may not be—
- (a) carried out for any of the purposes referred to in section 3(1) unless the person who proposes to carry it out, before doing so, complies with the requirements specified in subsection (4);
 - ^{F39}(b)
- (4) The requirements are that the person ^{F40}... must be satisfied—
- (a) [^{F41}if the person is a registered medical practitioner,] either—
 - (i) by personal examination of the body, that life is extinct; or
 - (ii) that another registered medical practitioner, by such personal examination, is so satisfied;
 - ^{F42}(ab) if the person is not a registered medical practitioner, that a registered medical practitioner, by personal examination of the body, is satisfied that life is extinct,]
 - (b) that, if the consent of the procurator fiscal to the carrying out of the removal is required by section 5(1), the consent has been given; and
 - (c) that the removal [^{F43}and use for the purpose in question] is authorised in accordance with section 6, [^{F44}6D, 6E, 6F, 6G, 6H, 8, 8D, 10 or, as the case may be, 10A].
- ^{F45}(4A) For the purposes of subsection (4)(c), the person who proposes to carry out the removal is entitled to be satisfied that the removal and use for the purpose in question is authorised in accordance with the section in question if subsections (4B) and (4C) apply.
- (4B) This subsection applies if the person who proposes to carry out the removal considers there to be an appropriate record that—
- (a) there is in force an authorisation by virtue of section 6, 6D, 6E, 6F, 6G, 6H, 8, 8D, 10 or, as the case may be, 10A as respects—
 - (i) the deceased person, and
 - (ii) the removal and use of the part for the purpose in question,
 - (b) the authorisation was given in accordance with the section in question,
 - (c) there is in force—
 - (i) in the case of a deceased adult, no opt-out declaration by the adult as respects removal and use of the part for the purpose in question,
 - (ii) in the case of a deceased child, no declaration by virtue of section 8B(1) by the child as respects removal and use of the part for the purpose in question,

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

- (d) in the case of a deceased adult who is deemed to have authorised the removal and use of a part of the adult's body for transplantation by virtue of section 6D, the deceased adult was not—
 - (i) a non-resident adult, or
 - (ii) an adult incapable of understanding the nature and consequences of deemed authorisation,
 - (e) a health worker has carried out inquiries—
 - (i) in the case of a deceased adult, in accordance with section 16H(2), and
 - (ii) in the case of a deceased child, in accordance with section 16I(2).
- (4C) This subsection applies if the person who proposes to carry out the removal has no reason to believe that—
- (a) there is in force no authorisation by virtue of section 6, 6D, 6E, 6F, 6G, 6H, 8, 8D, 10 or, as the case may be, 10A as respects—
 - (i) the deceased person, or
 - (ii) the removal and use of the part for the purpose in question,
 - (b) the authorisation was not given in accordance with the section in question,
 - (c) in the case of an authorisation given by a person other than the deceased person, the person who gave the authorisation was not entitled to do so,
 - (d) the deceased person would be unwilling in the circumstances for the part to be removed and used for the purpose in question.]

F46(5)

Textual Amendments

- F37** Words in s. 11(1)(b) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 22(2)**, 29(2); S.S.I. 2021/108, reg. 2
- F38** Words in s. 11(2) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 22(3)**, 29(2); S.S.I. 2021/108, reg. 2
- F39** S. 11(3)(b) repealed (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 22(4)**, 29(2); S.S.I. 2021/108, reg. 2
- F40** Words in s. 11(4) repealed (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 22(5)(a)**, 29(2); S.S.I. 2021/108, reg. 2
- F41** Words in s. 11(4)(a) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 22(5)(b)**, 29(2); S.S.I. 2021/108, reg. 2
- F42** S. 11(4)(ab) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 22(5)(c)**, 29(2); S.S.I. 2021/108, reg. 2
- F43** Words in s. 11(4)(c) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 22(5)(d)(i)**, 29(2); S.S.I. 2021/108, reg. 2
- F44** Words in s. 11(4)(c) substituted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 22(5)(d)(ii)**, 29(2); S.S.I. 2021/108, reg. 2
- F45** S. 11(4A)-(4C) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 22(6)**, 29(2); S.S.I. 2021/108, reg. 2
- F46** S. 11(5) repealed (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 22(7)**, 29(2); S.S.I. 2021/108, reg. 2

Commencement Information

- I7** S. 11(1)(a)(3)-(5) in force at 1.9.2006 by [S.S.I. 2006/251](#), **art. 3**
- I8** S. 11(1)(b)(2) in force at 1.9.2006 in so far as not already in force by [S.S.I. 2006/251](#), **arts. 2, 3, Sch.**

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross
Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

12 Removal of tissue sample to determine viability of transplantation

If it appears to a person removing, in accordance with authorisation by virtue of section [F47 6, 6D, 6E, 6F, 6G, 8, 8D, 10 or, as the case may be, 10A], any part of the body of a deceased person for transplantation that it is necessary or expedient to examine tissue sample removed from the part or any other part of the body to determine the viability of the transplantation (including in particular the safety of the transplant for the person who is to receive it), the person carrying out the removal may remove and secure the examination of such tissue sample from the part or the body as the person considers necessary or expedient for that purpose.

Textual Amendments

F47 Words in s. 12 substituted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), ss. **28(3)(b)**, 29(2); S.S.I. 2021/108, reg. 2

Commencement Information

I9 S. 12 in force at 1.9.2006 by [S.S.I. 2006/251](#), art. 3

13 Preservation for transplantation

- (1) Where part of the body of a deceased person lying in premises to which this section applies is or may be suitable for use for transplantation, the managers of the premises may—
 - (a) take steps for the purpose of preserving the part for use for transplantation;
 - (b) retain the body for that purpose,but may not move the part or body to other premises.
- (2) Authority under subsection (1)(a) extends only to—
 - (a) the taking of the minimum steps necessary for the purpose mentioned in that paragraph;
 - (b) the use of the least invasive procedure.
- (3) Authority under subsection (1)—
 - (a) extends to any person authorised to act under the authority by the managers of the premises in question;
 - (b) ceases to apply once it has been established that authorisation for removal of the part for transplantation has not been, and will not be, given.
- (4) The premises to which this section applies are—
 - (a) a health service hospital;
 - (b) premises in which a registered independent health care service is provided.
- (5) In this section—

F48
...

“health service hospital” has the meaning given by section 108(1) of that Act;

“managers” means—
 - (a) where the body is lying in a health service hospital, the Health Board or Special Health Board responsible for the administration of the hospital;
 - (b) where the body is lying in premises in which a registered independent health care service is provided, the person providing the service;

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

“registered independent health care service” means an independent health care service (as defined in ^{F49}section 10E of the National Health Service (Scotland) Act 1978 (c. 29)) registered under section 10P of that Act;]

^{F50}
...

Textual Amendments

- F48** Words in s. 13(5) repealed (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), [ss. 27\(6\), 29\(2\)](#); [S.S.I. 2021/108, reg. 2](#)
- F49** Words in s. 13(5) substituted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 17 para. 34](#); [S.S.I. 2010/321, art. 3, Sch.](#); [S.S.I. 2011/122, art. 2, Sch.](#)
- F50** Words in s. 13(5) repealed (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), [ss. 27\(6\), 29\(2\)](#); [S.S.I. 2021/108, reg. 2](#)

Commencement Information

- I10** S. 13 in force at 1.9.2006 by [S.S.I. 2006/251, art. 3](#)

14 Part of body removed before day on which section 3 comes into force

A part—

(a) removed—

- (i) from the body of a deceased person before the day on which section 3 comes into force for the purposes of transplantation, research, education, training or audit;
- (ii) other than during an examination having the characteristics of a post-mortem examination (whether or not carried out for the purposes of the functions, or under the authority, of the procurator fiscal) or an anatomical examination (within the meaning of section 1(1) of the Anatomy Act 1984 (c. 14); and

(b) held immediately before that day for use for any such purpose, may be retained and used for any such purpose.

Commencement Information

- I11** S. 14 in force at 1.9.2006 by [S.S.I. 2006/251, art. 3](#)

15 Existing request by adult not acted on before commencement of sections 3 and 6

(1) Where, immediately before the coming into force of sections 3 and 6—

- (a) there is in force a request by an adult that a part of the adult's body be used after the adult's death for transplantation either—
 - (i) in writing; or
 - (ii) ^{F51}given orally] (whether or not ^{F52}given] during the adult's last illness and whether or not ^{F52}given] in the presence of any witnesses); and
- (b) the request has not been acted on,

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

the request is to be treated for the purposes of this Part as if it were [^{F53}an express authorisation by the adult] (in writing or, as the case may be, [^{F51}given orally]).

- (2) In subsection (1), “writing” includes, in relation to the reference there to a request by an adult which is in force immediately before the coming into force of sections 3 and 6, representation of a character in visible form.

Textual Amendments

- F51** Words in s. 15(1) substituted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019](#) (asp 11), **ss. 28(3)(c)(i)**, 29(2); S.S.I. 2021/108, reg. 2
- F52** Words in s. 15(1) substituted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019](#) (asp 11), **ss. 28(3)(c)(ii)**, 29(2); S.S.I. 2021/108, reg. 2
- F53** Words in s. 15(1) substituted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019](#) (asp 11), **ss. 28(3)(c)(iii)**, 29(2); S.S.I. 2021/108, reg. 2

Commencement Information

- I12** S. 15 in force at 1.9.2006 by [S.S.I. 2006/251](#), **art. 3**

16 Offences: removal or use of part of body of deceased person for transplantation, research etc.

- (1) A person commits an offence if the person removes, after the day on which section 3 comes into force, a part of the body of a deceased person for any of the purposes referred to in section 3(1) or uses after that day any part so removed for any such purpose and—
- (a) the removal or, as the case may be, the use for the purpose in question is not authorised in accordance with section 6, [^{F54}6D, 6E, 6F, 6G, 6H, 8, 8D, 10 or, as the case may be, 10A]; or
- (b) any of the requirements in section 11(1) or (4)(a) is not satisfied as respects the part.

^{F55}(2)

- (3) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to—
- (i) imprisonment for a term not exceeding 12 months;
- (ii) a fine not exceeding the statutory maximum; or
- (iii) both;
- (b) on conviction on indictment, to—
- (i) imprisonment for a term not exceeding 3 years;
- (ii) a fine; or
- (iii) both.

Textual Amendments

- F54** Words in s. 16(1)(a) substituted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019](#) (asp 11), **ss. 28(3)(d)**, 29(2); S.S.I. 2021/108, reg. 2
- F55** S. 16(2) repealed (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019](#) (asp 11), **ss. 27(5)(c)**, 29(2); S.S.I. 2021/108, reg. 2

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Cross
Heading: Use of part of body of deceased person for transplantation, research etc.. (See end of Document for details)

Commencement Information

I13 S. 16 in force at 1.9.2006 by [S.S.I. 2006/251](#), **art. 3**

Changes to legislation:

There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006,
Cross Heading: Use of part of body of deceased person for transplantation, research etc..