



# Human Tissue (Scotland) Act 2006

## 2006 asp 4

### PART 2

#### POST-MORTEM EXAMINATIONS

#### **35 Post-mortem examination and removal and retention of organs: further requirements**

- (1) An activity mentioned in subsection (2) may not be carried out unless the person who proposes to carry it out is satisfied before doing so—
- (a) that the activity is authorised in accordance with section 29, 30, 31, 32 or, as the case may be, 33; and
  - (b) as respects the carrying out of a post-mortem examination that, if the consent of the procurator fiscal to carrying it out is required by section 26(1), the consent has been given.
- (2) The activities are—
- (a) a post-mortem examination;
  - (b) removal of an organ during the examination for a purpose referred to in section 28(2)(a);
  - (c) retention and use of an organ for such a purpose after removal.
- (3) For the purposes of subsection (1)(a), the person is entitled to be satisfied that the activity is authorised in accordance with the section in question if—
- (a) the person has no reason to believe either that the authorisation was not so given or that it was subsequently withdrawn;
  - (b) in the case of authorisation by virtue of section 29(1) which is in writing, it bears—
    - (i) to be as respects the deceased adult;
    - (ii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);
    - (iii) to be by, and signed by, the adult;
  - (c) in the case of authorisation by virtue of section 29(1) which is expressed verbally, there is what the person considers to be an appropriate record of the authorisation and the authorisation bears from the record—

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- (i) to be as respects the deceased adult;
  - (ii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);
  - (iii) to have been expressed verbally by the adult in the presence of 2 witnesses, each of whom was an adult when witnessing and was present when the other witnessed the authorisation;
- (d) in the case of authorisation by a nominee by virtue of section 30(1) or authorisation by virtue of section 30(2), it bears—
- (i) to be in writing;
  - (ii) to be as respects the deceased adult;
  - (iii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);
  - (iv) to be by a nominee or the nearest relative of the deceased adult and signed by the nominee or, as the case may be, the nearest relative;
  - (v) to state that the person who gave the authorisation had when authorising no actual knowledge that the adult was unwilling for a post-mortem examination to be carried out and, where the authorisation bears to be of an activity referred to in subsection (2)(b) or (c), for the activity in question to be carried out (for the purpose in question);
  - (vi) to be witnessed, and signed, by one witness who was an adult when witnessing;
  - (vii) if by a nominee by virtue of section 30(1), to state that the nominee was an adult when giving the authorisation;
  - (viii) to be in the form prescribed for the time being under section 52(a) for such authorisation;
- (e) in the case of authorisation by virtue of section 31(1) which is not signed by a person on behalf of the child, it bears—
- (i) to be in writing;
  - (ii) to be as respects the deceased child;
  - (iii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);
  - (iv) to be by, and signed by, the child while 12 years of age or over;
  - (v) to be witnessed, and signed, by 2 witnesses each of whom was an adult when witnessing and was present when the other witnessed the authorisation;
  - (vi) to contain or be accompanied by certification in writing by, and signed by, each witness that in the opinion of the witness the child understood the effect of the authorisation and was not acting under undue influence in giving it;
- (f) in the case of authorisation by virtue of section 31(1) which is signed by a person on behalf of the child, it bears—
- (i) to be in writing;
  - (ii) to be as respects the deceased child;

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- (iii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);
  - (iv) to be on behalf of the child while 12 years of age or over;
  - (v) to be signed by an adult on behalf of the child because the child was blind or unable to write at the time of giving the authorisation;
  - (vi) to be witnessed by one witness who was an adult when witnessing and was present when the other adult signing the authorisation signed it;
  - (vii) to contain a statement signed by both the signatory and the witness in the presence of the child and of each other that the child, in the presence of them both, expressed the intention to give the authorisation and requested the signatory to sign it on the child's behalf;
  - (viii) to contain or be accompanied by certification in writing signed by the person signing the authorisation on behalf of the child that, in the opinion of the person, the child understood the effect of the authorisation and was not acting under undue influence in giving it and by certification in writing signed by the witness that, in the opinion of the witness, the child so understood and was not so acting;
- (g) in the case of authorisation by a nominee by virtue of section 32(1) or authorisation by virtue of section 32(2), it bears—
- (i) to be in writing;
  - (ii) to be as respects the deceased child (who died 12 years of age or over);
  - (iii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);
  - (iv) to be by a nominee of the deceased child or a person who, immediately before the child's death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority) and to be signed by the nominee or, as the case may be, the person;
  - (v) to state that the person who gave the authorisation had no actual knowledge that the child was unwilling for a post-mortem examination to be carried out and, where the authorisation bears to be of an activity referred to in subsection (2)(b) or (c), for the activity in question to be carried out (for the purpose in question);
  - (vi) to be witnessed, and signed, by 2 witnesses each of whom was an adult when witnessing and was present when the other witnessed the authorisation;
  - (vii) if by a nominee by virtue of section 32(1), to state that the nominee was an adult when giving the authorisation;
  - (viii) to be in the form prescribed for the time being under section 52(a) for such authorisation;
- (h) in the case of authorisation by virtue of section 33(1), it bears—
- (i) to be in writing;
  - (ii) to be as respects the deceased child (who died under 12 years of age);
  - (iii) to authorise the activity in question (and, where the activity in question is that referred to in subsection (2)(b) or (c), to authorise the purpose in question);

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- (iv) to be by a person who, immediately before the child's death, had parental rights and parental responsibilities in relation to the child (but who is not a local authority) and to be signed by the person;
- (v) to be witnessed, and signed, by 2 witnesses each of whom was an adult when witnessing and was present when the other witnessed the authorisation;
- (vi) to be in the form prescribed for the time being under section 52(a) for such authorisation.