

HUMAN TISSUE (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 4: Parts 1 to 3: Supplementary Provision

Section 49 – Conditions attached to authorisation

115. Paragraph (a) of subsection (1) provides that conditions can be attached to the following authorisations under Part 1 of the Act: an authorisation by the nearest relative of an adult under section 7(1); an authorisation under section 9(1) by a person who immediately before the death of a child who died 12 years of age or over had parental rights and responsibilities in relation to that child; an authorisation under section 10(1) by a person who immediately before the death of a child who died under 12 years of age had parental rights and responsibilities in relation to that child. However, conditions can only be attached to authorisation by virtue of those provisions where the removal and use of a body part is for the purposes of research, education, training or audit. Conditions cannot be attached to such authorisation when removal and use of a body part is for the purpose of transplantation.
116. [Section 49\(1\)](#) also provides that conditions can be attached to the following authorisations under Parts 2 and 3: authorisation by a nominee of an adult under section 30(1) or the nominee of a child who died 12 years of age or over under section 32(1); an authorisation by the nearest relative of an adult under section 30(2) or 43(1); an authorisation under section 32(2) or 45(1) by a person who immediately before the death of a child who died 12 years of age or over had parental rights and responsibilities in relation to that child; an authorisation under section 33(1) or 46(1) by a person who immediately before the death of a child who died under 12 years of age had parental rights and responsibilities in relation to that child.
117. Subsection (2) requires that where conditions are attached by virtue of subsection (1), the matter authorised must be carried out in accordance with those conditions, in so far as it is reasonably practicable to do so. The standard authorisation forms that will be prescribed for hospital post-mortem examinations will allow for the making of such conditions.

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.

Section 51 – Witnesses: additional provisions

119. **Section 51(1)** provides for additional requirements which must be satisfied in relation to the witnessing of authorisation, withdrawal of authorisation, nomination or withdrawal of nomination in writing, in terms of the provisions specified in this subsection. The specified provisions include those which allow a signatory to sign on behalf of an adult or a child 12 years of age or over who is blind or unable to write. The requirements are that a witness must be an adult, must be a witness to the signature and the content of the writing and must sign the writing. Where 2 witnesses are required they must be present at the same time. Subsection (2) provides for additional requirements in relation to the witnessing of verbal authorisation or verbal withdrawal of authorisation by an adult in terms of section 29(2)(b) and (3)(b)(ii). The requirements are that each of the 2 witnesses must be an adult and must be a witness to the verbal expression of authorisation or withdrawal. Again, both witnesses must also be present at the same time.

Section 52 – Power to prescribe forms and descriptions of persons who may act as a witness

120. **Section 52** gives the Scottish Ministers power to prescribe by regulations the form in which authorisations by nominees or nearest relatives is to be, or may be given, and the type of people who can act as witnesses in certain cases.