

HUMAN TISSUE (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 1: Transplantation Etc.

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

23. **Section 11(1)** provides that removal of a body part for transplantation, or for any of the other purposes set out in section 3(1), must be undertaken by a registered medical practitioner or someone authorised to do so in accordance with regulations made by the Scottish Ministers. Section 11(2) specifies that such regulations can in particular provide for a registered medical practitioner to authorise the removal by a non-practitioner. The intention is to make such regulations so that tissue (as opposed to solid organs) could be retrieved by someone who has been trained to do so but may not be a registered medical practitioner.
24. Subsection (3) provides that the body part may not be removed unless the person who proposes to undertake the removal meets the requirements of section 11(4). In addition, a registered medical practitioner who proposes to authorise another person to undertake the removal must also meet those requirements.
25. The requirements in subsection (4) are that the person undertaking the removal (and where a registered medical practitioner proposes to authorise another person to undertake it, that practitioner) must be satisfied, either by personal examination, or from the personal examination by another registered medical practitioner, that life is extinct; that any necessary consent of the procurator fiscal under section 5(1) has been provided; and that the removal is authorised in accordance with the relevant section of the Act.
26. Subsection (5) provides that the person undertaking the removal (and where a registered medical practitioner proposes to authorise another person to undertake it, that practitioner) is entitled to be satisfied that the relevant authorisation is in place in specified circumstances. The authorisation forms used by the transplant co-ordinators will be adapted to make sure they reflect each of the requirements in relation to written authorisations which are set out in this subsection. Section 11(5)(g) will apply only where the authorisation has been signed by the child under section 9(1) and not where it has been signed by an adult on their behalf.
27. Paragraphs (a), (b), (d), (e), (f), (g), (h), (i), (j) and (k) all relate to written authorisations under various provisions in Part 1 of the Act. Paragraph (k) relates to written authorisation which has been signed by an adult under section 9(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 practitioner and any other person undertaking the removal will need to know that it is acceptable for them to proceed on the basis of the proper authorisation, thereby avoiding any invocation of the provisions of section 16, which provide that an offence is committed if removal and use of the body part is not authorised by the relevant provision in Part 1.

*These notes relate to the Human Tissue (Scotland) Act 2006
(asp 4) which received Royal Assent on 16 March 2006*

28. Paragraph (c) relates to verbal authorisation by an adult under section 6(1). In such cases, there requires to be what that person undertaking the removal (or the practitioner, as the case may be) considers to be an appropriate record of the authorisation by the adult. The person or practitioner is also entitled to be satisfied that the removal is authorised in accordance with section 6(1) if the verbal authorisation bears from the record to be as respects the deceased adult, to authorise removal of the part for the purpose in question and to have been expressed verbally by the adult. Similarly, paragraphs (e), (g) and (i) relate to verbal authorisation by an adult's nearest relative under section 7(1), (2) and (3) respectively. Paragraphs (m), (o) and (q) relate to verbal authorisation under section 9(1), (2) or (3) respectively by a person who, immediately before the death of a child who died 12 years of age over, had parental rights and responsibilities in relation to that child. Paragraph (l) relates to verbal 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. In such cases, there requires to be what the person undertaking the removal (or the practitioner as the case may be) considers to be an appropriate record of the verbal authorisation. In each of these cases, the person or practitioner is entitled to be satisfied that the removal is authorised in accordance with the relevant authorisation provision if the authorisation bears from that record to demonstrate the matters listed in the relevant paragraph. Again, these provisions reflect the fact that the practitioner and any other person undertaking the removal will need to know when it is acceptable 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 practitioner and any other person undertaking the removal. "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.