



# Human Tissue (Scotland) Act 2006

## 2006 asp 4

### PART 1

#### TRANSPLANTATION ETC.

##### *[<sup>F1</sup>Pre-death procedures relating to transplantation*

#### **[<sup>F1</sup>16F Authorisation of Type A procedures**

- (1) For the purposes of section 16E(1)(d), the carrying out of a Type A procedure is authorised in relation to a person if—
- (a) the person has expressly authorised the carrying out of the procedure,
  - (b) in the case of an adult who, at the relevant time, has not expressly authorised the carrying out of any procedure, if the adult's nearest relative is, at the relevant time, entitled to authorise the removal and use of a part of the adult's body by virtue of section 6E or 6F and the adult's nearest relative authorises the carrying out of the procedure,
  - (c) in the case of a child who, at the relevant time, has not expressly authorised the carrying out of any procedure—
    - (i) if a person who has parental rights and parental responsibilities in relation to the child is, at the relevant time, entitled to authorise the removal and use of a part of the child's body by virtue of section 8D or 10 and that person authorises the carrying out of the procedure,
    - (ii) if a person is, at the relevant time, entitled to authorise the removal and use of a part of the child's body by virtue of section 10A and that person authorises the carrying out of the procedure,
  - (d) in the case of an adult who, at the relevant time, has not expressly authorised the carrying out of any procedure, there is in force an express authorisation by the adult of removal and use of a part of the adult's body for transplantation,
  - (e) in the case of a child who, at the relevant time, has not expressly authorised the carrying out of any procedure, there is in force an authorisation by virtue of section 8 by the child of removal and use of a part of the child's body for transplantation, or
  - (f) in the case of an adult, the adult is deemed by virtue of section 6D to have authorised the removal and use of a part of the adult's body for transplantation.

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*Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Section 16F. (See end of Document for details)*

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- (2) For the purposes of subsection (1)(b), the nearest relative of an adult may not give authorisation—
- (a) if the relative has actual knowledge that the adult was unwilling for the procedure to be carried out, or
  - (b) unless the relative—
    - (i) has had regard to the adult's past wishes and feelings so far as reasonably ascertainable (having had regard to any evidence referred to in section 16H(6)(c)), and
    - (ii) is satisfied that if the adult were capable of making a decision about authorisation of the procedure, the adult would not be unwilling for the procedure to be carried out.
- (3) For the purposes of subsection (1)(c), a person may not give authorisation—
- (a) if the person has actual knowledge that the child was unwilling for the procedure to be carried out, or
  - (b) unless the person—
    - (i) has had regard to the child's past wishes and feelings so far as reasonably ascertainable (having had regard to any evidence referred to in section 16I(4)(c)), and
    - (ii) is satisfied that if the child were capable of making a decision about authorisation of the procedure, the child would not be unwilling for the procedure to be carried out.
- (4) Where a person has expressly authorised the carrying out of one or more Type A procedures under subsection (1)(a), subsection (1)(f) does not authorise the carrying out of a Type A procedure not mentioned in that authorisation.
- (5) An authorisation under subsection (1)(a), (b) or (c) must be—
- (a) in writing, or
  - (b) given orally to a health worker.]

#### Textual Amendments

- F1** S. 16A-16G and cross-heading 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. 23(1), 29(2)**; [S.S.I. 2019/305, reg. 2\(c\)](#); [S.S.I. 2021/108, reg. 2](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Human Tissue (Scotland) Act 2006, Section 16F.