



# Human Tissue (Authorisation) (Scotland) Act 2019

2019 asp 11

## PART 3

### AUTHORISATION OF REMOVAL AND USE OF PART OF BODY OF DECEASED PERSON

#### CHAPTER 6

##### DUTY TO INQUIRE

#### 24 Duty to inquire

After section 16G of the 2006 Act insert—

**“16H Duty to inquire: adult**

- (1) A health worker must act in accordance with subsection (2) before the earlier of—
- (a) the carrying out of a pre-death procedure in relation to an adult, or
  - (b) the removal of part of the body of a deceased adult for any of the purposes referred to in section 3(1).
- (2) The health worker must—
- (a) take reasonable steps to inquire into whether there is in force—
    - (i) an express authorisation by the adult,
    - (ii) an opt-out declaration by the adult,
  - (b) if subsection (3) applies, inquire into whether the adult—
    - (i) is a non-resident adult (within the meaning given by section 6D(2)(a)),
    - (ii) is an adult who is incapable of understanding the nature and consequences of deemed authorisation (within the meaning given by section 6D(3)),

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- (c) in the case of an adult who is incapable of understanding the nature and consequences of deemed authorisation, inquire into the adult's past wishes and feelings so far as reasonably ascertainable, and
  - (d) in any case inquire, by consulting (so far as is reasonably practicable) the persons referred to in subsection (5), into the adult's most recent views in relation to—
    - (i) the carrying out of pre-death procedures in relation to the adult, and
    - (ii) the removal and use of a part of the adult's body for a purpose referred to in section 3(1).
- (3) This subsection applies in relation to an adult if 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.
- (4) When acting in accordance with subsection (2)(b)(ii), the health worker must consult (so far as is reasonably practicable) any person who has indicated a wish to provide evidence that the adult is an adult who is incapable of understanding the nature and consequences of deemed authorisation.
- (5) The persons referred to in subsection (2)(d) are—
- (a) the nearest relative of the adult,
  - (b) any person who has indicated to a health worker a wish to provide evidence mentioned in subsection (6), and
  - (c) such other persons as the health worker considers appropriate.
- (6) The evidence referred to in subsection (5)(b) is evidence—
- (a) that the adult's most recent view was that the adult was willing or, as the case may be, unwilling for a part of the adult's body to be removed and used for a purpose referred to in section 3(1),
  - (b) that if the adult were capable of making a decision about removal and use of a part, the adult would be willing or, as the case may be, unwilling in the circumstances for part of the adult's body to be removed and used for a purpose referred to in section 3(1),
  - (c) about the adult's views in relation to the carrying out of a pre-death procedure in relation to the adult.

### **16I Duty to inquire: child**

- (1) A health worker must act in accordance with subsection (2) before the earlier of—
- (a) the carrying out of a pre-death procedure in relation to a child, or
  - (b) the removal of part of the body of a deceased child for any of the purposes referred to in section 3(1).
- (2) The health worker must—
- (a) take reasonable steps to inquire into whether there is in force—
    - (i) an authorisation by virtue of section 8(1) by the child,

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- (ii) a declaration by virtue of section 8B(1) by the child, and
- (b) inquire, by consulting (so far as is reasonably practicable) the persons referred to in subsection (3), into the child's most recent views in relation to—
  - (i) the carrying out of pre-death procedures in relation to the child, and
  - (ii) the removal and use of a part of the child's body for a purpose referred to in section 3(1).
- (3) The persons referred to in subsection (2)(b) are—
  - (a) a person who, at the relevant time, has parental rights and parental responsibilities in relation to the child,
  - (b) if a person is entitled to authorise removal and use of a part of the child's body by virtue of section 10A, that person,
  - (c) any person who has indicated to a health worker a wish to provide evidence mentioned in subsection (4), and
  - (d) such other persons as the health worker considers appropriate.
- (4) The evidence referred to in subsection (3)(c) is evidence—
  - (a) that the child's most recent view was that the child was willing or, as the case may be, unwilling for a part of the child's body to be removed and used for a purpose referred to in section 3(1),
  - (b) that if the child were capable of making a decision about removal and use of a part, the child would be willing or, as the case may be, unwilling in the circumstances for a part of the child's body to be removed and used for a purpose referred to in section 3(1),
  - (c) about the child's views in relation to the carrying out of a pre-death procedure in relation to the child.”.

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**Commencement Information**

**II** S. 24 in force at 26.3.2021 by S.S.I. 2021/108, reg. 2

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