



Human Tissue (Authorisation) (Scotland) Act 2019

2019 asp 11

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 11th June 2019 and received Royal Assent on 18th July 2019

An Act of the Scottish Parliament to make provision about authorisation of the removal and use of part of the body of a deceased person for transplantation and other purposes; and for connected purposes.

PART 1

OVERVIEW OF ACT

1 Overview of Act

This Act is arranged as follows—

Part 2 amends the Human Tissue (Scotland) Act 2006 (“the 2006 Act”) to make provision about duties of the Scottish Ministers in relation to transplantation and pre-death procedures and in relation to the register,

Part 3 amends the 2006 Act to make provision about the authorisation of removal and use of part of the body of a deceased person,

Part 4 contains general and final provisions.

Commencement Information

II [S. 1](#) in force at 11.10.2019 by [S.S.I. 2019/305](#), [reg. 2\(a\)](#)

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Authorisation) (Scotland) Act 2019. (See end of Document for details)

PART 2

DUTIES OF THE SCOTTISH MINISTERS

2 Information and awareness about authorisation of transplantation and about pre-death procedures

- (1) In section 1 of the 2006 Act, at the end of paragraph (c), insert “;
 - (d) promote information and awareness about how transplantation may be authorised (including, in particular, how authorisation of transplantation may be deemed to be given);
 - (e) promote information and awareness about the nature of pre-death procedures, when they may be carried out and how they may be authorised”.
- (2) The text of section 1 so amended becomes subsection (1).
- (3) After subsection (1) so formed, insert—
 - “(2) The duty under subsection (1)(d) must be carried out at least once in every calendar year.
 - (3) The Scottish Ministers must, in carrying out the duty under subsection (1)(d), have regard to the need to—
 - (a) provide information to the public about—
 - (i) how authorisation of transplantation may be deemed to be given,
 - (ii) how to give an express authorisation or make an opt-out declaration,
 - (b) provide information in health care settings about—
 - (i) how authorisation of transplantation may be deemed to be given,
 - (ii) how to give an express authorisation or make an opt-out declaration.
 - (4) In subsection (3)(b), “health care settings” means any place where a service is provided for or in connection with the prevention, detection or treatment of illness, other than an independent health care service (within the meaning of section 10F of the National Health Service (Scotland) Act 1978).”.

Commencement Information

12 [S. 2](#) in force at 26.3.2021 by [S.S.I. 2021/108](#), [reg. 2](#)

3 Establishment and maintenance of register

- (1) The 2006 Act is amended as follows.
- (2) After section 2 insert—

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Authorisation) (Scotland) Act 2019. (See end of Document for details)

“Establishment and maintenance of register

2A Establishment and maintenance of register

- (1) The Scottish Ministers must make arrangements for the establishment and maintenance of a register (referred to in this Part as “the Register”) for the purposes of facilitating—
 - (a) the carrying out of their duty under section 1(a),
 - (b) the removal and use of part of the body of a deceased person for transplantation that is authorised by virtue of section 6, 6D, 6E, 6F, 6G, 8, 8D, 10 or, as the case may be, 10A.
- (2) The Register must include information relating to—
 - (a) persons who authorise the removal and use of a part of the person's body after the person's death for transplantation,
 - (b) persons who do not authorise the removal and use of a part of the person's body after the person's death for transplantation.
- (3) The Register is not to be open to public inspection or search.
- (4) Information may be kept in the Register in any form the Scottish Ministers consider appropriate.

2B Delegation of function of establishing and maintaining Register

- (1) Arrangements made by the Scottish Ministers under section 2A(1) may in particular authorise a person to establish and maintain the Register.
- (2) In this Part, “register organisation” means—
 - (a) the Scottish Ministers, or
 - (b) where a person is authorised as mentioned in subsection (1), that person.
- (3) The Scottish Ministers must publish information about arrangements under section 2A(1) so far as they authorise a person as mentioned in subsection (1).

2C Disclosure of information

- (1) The register organisation may disclose information about a person from the Register to—
 - (a) a person listed in subsection (3) for the purpose of enabling or assisting a person listed in subsection (3) to carry out functions under this Part that relate to the removal and use of a part of the body for transplantation,
 - (b) a person operating outwith Scotland for the purpose of enabling or assisting that person to carry out functions that relate to the removal and use of a part of the body for transplantation.
- (2) The power to disclose information about a person from the Register conferred by subsection (1) includes the power to disclose that there is no information kept in the Register about the person.

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Authorisation) (Scotland) Act 2019. (See end of Document for details)

- (3) The persons are—
 - (a) a registered medical practitioner,
 - (b) a person (or person within a description) authorised under section 11(1)(b),
 - (c) a health worker who is acting in accordance with section 16H or 16I.
- (4) A person who receives information under subsection (1)(a) may, for the purpose of enabling or assisting a person listed in subsection (3) to carry out functions under this Part that relate to the removal and use of a part of the body for transplantation, disclose that information to a person listed in subsection (3) or (5).
- (5) The persons are—
 - (a) in relation to a person who at the relevant time is an adult—
 - (i) the adult's nearest relative,
 - (ii) any other person who is consulted under section 16H(2)(d) in relation to the adult,
 - (b) in relation to a person who at the relevant time is a child—
 - (i) a person who has parental rights and parental responsibilities in relation to the child,
 - (ii) a person mentioned in section 10A(4),
 - (iii) any other person who is consulted under section 16I(2)(b) in relation to the child.

2D Power to make provision about Register

- (1) The Scottish Ministers may by regulations make provision in relation to the Register.
- (2) Regulations under subsection (1) may, in particular—
 - (a) modify section 2A(1) to add the purpose of facilitating the removal and use of part of the body of a deceased person for a purpose referred to in paragraphs (b) to (d) of section 3(1),
 - (b) modify the list in section 2A(2),
 - (c) modify the list in section 2C(3) to—
 - (i) add a person (or description of person),
 - (ii) remove, or vary the description of, a person (or description of person),
 - (d) modify the purposes for which information may be disclosed under section 2C.”.
- (3) In section 59(3) (regulations subject to affirmative procedure), after paragraph (a) insert—
 - “(aa) regulations under section 2D(1);”.

Commencement Information

I3 [S. 3](#) in force at 26.3.2021 by [S.S.I. 2021/108](#), [reg. 2](#)

Changes to legislation: There are currently no known outstanding effects for the Human Tissue (Authorisation) (Scotland) Act 2019. (See end of Document for details)

PART 3

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

CHAPTER 1

TIMING OF AUTHORISATION

4 Timing of authorisation

- (1) The 2006 Act is amended as follows.
- (2) In section 7—
 - (a) in subsection (1), for “immediately before an adult's death no authorisation by the” substitute “ at the relevant time no authorisation by an ”,
 - (b) in subsections (2) and (3), for “immediately before an adult's death authorisation by the” substitute “ at the relevant time authorisation by an ”,
 - (c) in subsections (1), (2) and (3), the word “deceased” is repealed.
- (3) In section 9—
 - (a) before subsection (1), insert—

“(A1) Subsections (1) to (3) apply in relation to a child who is 12 years of age or over at the relevant time.”,
 - (b) in subsections (1) and (2), for “immediately before the death of a child who died 12 years of age or over” substitute “ at the relevant time ”,
 - (c) in subsections (1), (2) and (3), for “immediately before the death, had” substitute “ at the relevant time, has ”,
 - (d) in subsection (3), for “immediately before the child's death” substitute “ at the relevant time ”.
- (4) The title of section 9 becomes “ **Authorisation by person with parental rights and responsibilities: child 12 years of age or over** ”.
- (5) In section 10—
 - (a) before subsection (1), insert—

“(A1) Subsection (1) applies in relation to a child who is under 12 years of age at the relevant time.”,
 - (b) in subsection (1), for “immediately before the death of a child who died under 12 years of age had” substitute “ at the relevant time has ”.
- (6) The title of section 10 becomes “ **Authorisation by person with parental rights and responsibilities: child under 12 years of age** ”.
- (7) In section 11(5)—
 - (a) in paragraphs (d)(iii), (e)(iii), (f)(iii), (g)(iii), (h)(iii) and (i)(iii), the word “deceased” is repealed,
 - (b) in paragraphs (l)(i), (m)(i), (n)(i), (o)(i), (p)(i), (q)(i), (r)(i) and (s)(i), for the word “died” substitute “ at the relevant time was ”,