

# Human Tissue (Authorisation) (Scotland) Bill

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## Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 29

Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Section 2

#### Jeremy Balfour

4 In section 2, page 1, line 24, at end insert—

<(f) send or ensure that there is sent, at least once in each two-year period, information on the matters mentioned in paragraphs (a) to (e) to every person registered in the register of local government electors maintained under section 9(1)(b) of the Representation of the People Act 1983 for any area in Scotland.”.

( ) The text of section 1 so amended becomes subsection (1).

( ) After subsection (1) so formed, insert—

“(2) In paragraph (f) of subsection (1), “two-year period” means—

(a) the period of two years beginning with the day that section 2 of the Human Tissue (Authorisation) (Scotland) Act 2019 comes into force, and

(b) each subsequent period of two years.”.>

#### Lewis Macdonald

56 In section 2, page 1, line 24, at end insert—

<( ) The text of section 1 so amended becomes subsection (1).

( ) After subsection (1) so formed, insert—

“(2) The duty in subsection (1) includes in particular an obligation on the Scottish Ministers, at least once in every calendar year, to promote a campaign of awareness and information for the purpose of informing the Scottish public about—

(a) the circumstances in which authorisation of transplantation may be deemed to be given in the absence of express authorisation, and

(b) the method by which a person may make—

(i) an express authorisation under section 6,

(ii) an opt-out declaration under section 6B.”.>

### Section 3

#### Jeremy Balfour

- 5 In section 3, page 2, line 9, leave out <6G,>

#### Joe FitzPatrick

- 24 In section 3, page 2, line 28, after <information> insert <about a person>

#### Joe FitzPatrick

- 25 In section 3, page 2, line 28, leave out from <a person> to end of line 36 and insert <—
- (a) a person listed in subsection (2) for the purpose of enabling or assisting a person listed in subsection (2) 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.>

#### Joe FitzPatrick

- 26 In section 3, page 2, line 36, at end insert—
- <( ) 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.>

#### Joe FitzPatrick

- 27 In section 3, page 2, line 38, leave out from beginning to end of line 1 on page 3 and insert—
- <( ) a registered medical practitioner,
  - ( ) a person (or person within a description) authorised under section 11(1)(b),
  - ( ) a health worker who is acting in accordance with section 16H or 16I.>

#### Joe FitzPatrick

- 28 In section 3, page 3, line 2, leave out from <(1)> to <(b)> in line 3 and insert <(1)(a) may, for the purpose of enabling or assisting a person listed in subsection (2) to carry out functions under this Part that relate to the removal and use of a part of the body for transplantation>

#### Joe FitzPatrick

- 29 In section 3, page 3, line 4, after <subsection> insert <(2) or>

#### Joe FitzPatrick

- 30 In section 3, page 3, line 25, leave out <persons within a description> and insert <description of person>

**Joe FitzPatrick**

- 31 In section 3, page 3, line 25, leave out from <whether> to <Scotland> in line 26

**Joe FitzPatrick**

- 32 In section 3, page 3, line 27, leave out <persons within a description> and insert <description of person>

**Joe FitzPatrick**

- 33 In section 3, page 3, line 30, leave out <2C(1)(a) or (b)> and insert <2C>

**David Stewart**

- 57 In section 3, page 3, line 30, at end insert—

*<Duty to promote opportunities for individuals to consider register status*

**2E Duty to promote opportunities for individuals to consider register status**

- (1) It is the duty of the Scottish Ministers to promote regular opportunities for a person—
- (a) to consider making an express authorisation of removal and use of a part of the person’s body after the person’s death for transplantation,
  - (b) to review and consider whether the person wishes to maintain the express authorisation,
  - (c) to consider making a declaration that the person does not authorise the removal and use of a part of the person’s body after the person’s death for transplantation.
- (2) Without prejudice to the generality of subsection (1), the Scottish Ministers must, in particular, consider how such opportunities can be provided in the course of a person receiving any health care services under the National Health Service (Scotland) Act 1978.”>

**Section 5**

**Joe FitzPatrick**

- 34 In section 5, page 6, line 10, leave out <in writing> and insert <—

( ) in writing, or

( ) if the express authorisation was given to the register organisation, by giving the withdrawal to the register organisation orally or in writing.>

**Joe FitzPatrick**

- 35 In section 5, page 6, line 24, leave out <convince a reasonable person> and insert <lead a reasonable person to conclude>

## Section 6

### Joe FitzPatrick

- 36 In section 6, page 7, line 21, leave out <in writing> and insert <—  
( ) in writing, or  
( ) if the opt-out declaration was made to the register organisation, by giving the withdrawal to the register organisation orally or in writing.>

### Joe FitzPatrick

- 37 In section 6, page 7, line 36, leave out <convince a reasonable person> and insert <lead a reasonable person to conclude>

### Jeremy Balfour

- 6 In section 6, page 8, leave out line 15

## Section 7

### Jeremy Balfour

- 7 In section 7, page 9, line 5, leave out <12 months> and insert <2 years>

### Jeremy Balfour

- 8 In section 7, page 9, line 5, leave out <12 months> and insert <3 years>

### Jeremy Balfour

- 9 In section 7, page 9, leave out line 9

### Jeremy Balfour

- 10 In section 7, page 9, line 9, at end insert—  
<( ) a part of the adult's body—  
(i) consisting wholly or partly of reproductive cells, or  
(ii) intended to be used for reproductive purposes (including for the creation of cells for reproductive purposes),>

### Jeremy Balfour

- 11 In section 7, page 9, line 10, leave out <(that is not an excepted body part)>

### Gordon Lindhurst

- 58 In section 7, page 9, line 10, leave out <if> and insert <unless>

### Gordon Lindhurst

- 59 In section 7, page 9, line 10, leave out <a person> and insert <the nearest relative>

**Joe FitzPatrick**

- 38 In section 7, page 9, line 11, leave out <convince a reasonable person> and insert <lead a reasonable person to conclude>

**Gordon Lindhurst**

- 60 In section 7, page 9, line 13 leave out <unwilling> and insert <willing>

**Gordon Lindhurst**

- 61 In section 7, page 9, line 16 leave out <unwilling> and insert <willing>

**Joe FitzPatrick**

- 39 In section 7, page 9, line 29, leave out <convince a reasonable person> and insert <lead a reasonable person to conclude>

**Jeremy Balfour**

- 12 In section 7, page 9, leave out lines 30 to 37

**Section 10**

**Jeremy Balfour**

- 13 Leave out section 10

**Section 12**

**Joe FitzPatrick**

- 40 In section 12, page 14, line 4, leave out <in writing> and insert <—  
( ) in writing, or  
( ) if the authorisation was given to the register organisation, by giving the withdrawal to the register organisation orally or in writing.>

**Joe FitzPatrick**

- 41 In section 12, page 14, line 20, leave out <convince a reasonable person> and insert <lead a reasonable person to conclude>

**Section 13**

**Joe FitzPatrick**

- 42 In section 13, page 15, line 17, leave out <in writing> and insert <—  
( ) in writing, or  
( ) if the declaration was made to the register organisation, by giving the withdrawal to the register organisation orally or in writing.>

**Joe FitzPatrick**

- 43 In section 13, page 15, line 33, leave out <convince a reasonable person> and insert <lead a reasonable person to conclude>

**Section 21**

**Joe FitzPatrick**

- 44 In section 21, page 22, line 32, at end insert—
- <( ) In subsection (1)(b), after “person” insert “(or description of person)”.
  - ( ) In subsection (2), after “person” insert “(or description of person)”.
  - ( ) In subsection (3), paragraph (b) is repealed.>

**Joe FitzPatrick**

- 45 In section 21, page 23, leave out lines 2 to 4 and insert—
- <(a) in the opening words, the words from “(and,” to “the practitioner)” are repealed,>

**Joe FitzPatrick**

- 46 In section 21, page 23, line 4, at end insert—
- <( ) at the beginning of paragraph (a), insert “if the person is a registered medical practitioner,”
  - ( ) after paragraph (a), insert—
    - “(ab) if the person is not a registered medical practitioner, that a registered medical practitioner, by personal examination of the body, is satisfied that life is extinct,”>

**Jeremy Balfour**

- 14 In section 21, page 23, line 7, leave out <6G,>

**Joe FitzPatrick**

- 47 In section 21, page 23, line 11, leave out from <(and,> to <practitioner> in line 12

**Joe FitzPatrick**

- 48 In section 21, page 23, line 16, leave out from <(and,> to <practitioner> in line 17

**Jeremy Balfour**

- 15 In section 21, page 23, line 18, leave out <6G,>

**Joe FitzPatrick**

- 49 In section 21, page 23, line 40, leave out from <(and,> to <practitioner> in line 41

**Jeremy Balfour**

- 16 In section 21, page 24, line 1, leave out <6G,>

**Section 22**

**Joe FitzPatrick**

- 50 In section 22, page 24, line 35, at end insert—  
<(1A) Regulations under subsection (1) may make different provision for different procedures or categories of procedure and in particular may specify that a pre-death procedure or category of pre-death procedure is a Type A procedure only where that procedure is carried out in a particular way.>

**Joe FitzPatrick**

- 51 In section 22, page 26, line 3, after <procedure> insert <or who has authorised a person to carry out the procedure>

**Jeremy Balfour**

- 17 In section 22, page 26, line 15, leave out <6G,>

**Jeremy Balfour**

- 18 In section 22, page 26, line 27, at end insert—  
<( ) the carrying out of the procedure is not in itself likely to shorten the life expectancy of the person,>

**Section 23**

**Joe FitzPatrick**

- 52 In section 23, page 31, leave out lines 7 to 14

**Section 26**

**Joe FitzPatrick**

- 53 In section 26, page 31, line 31, at end insert—  
<( ) After section 16I insert—  
**“16J Meaning of “health worker”**  
(1) In sections 1 to 16K, “health worker” means—  
(a) a registered medical practitioner,  
(b) a registered nurse,  
(c) a person (or person within a description) in so far as that person is (or persons of that description are) authorised by a person listed in subsection (2) to exercise the functions of a health worker under sections 6A to 16I.

- (2) The persons are—
  - (a) a registered medical practitioner,
  - (b) a registered nurse,
  - (c) a Health Board,
  - (d) a Special Health Board,
  - (e) the Common Services Agency for the Scottish Health Service.
- (3) An authorisation under subsection (1)(c) may, in particular—
  - (a) authorise a person (or description of person) to exercise some or all of the functions of a health worker under sections 6A to 16I,
  - (b) authorise a person (or description of person) to exercise functions in relation to particular cases or classes of case,
  - (c) authorise different persons (or descriptions of person) to exercise different functions.
- (4) An authorisation under subsection (1)(c) may be given only if the person listed in subsection (2) considers that the person (or the description of person) has the appropriate skills, qualifications or experience to carry out the functions in respect of which the authorisation is given.
- (5) An authorisation under subsection (1)(c) may be revoked—
  - (a) in the case of an authorisation given to a description of person by a person other than a registered medical practitioner or a registered nurse, by the person who gave that authorisation, and
  - (b) in any other case, by any person listed in subsection (2).
- (6) The Scottish Ministers may give directions (of a general or specific nature) to persons listed in subsection (2) in relation to authorisations under subsection (1)(c).
- (7) A person listed in subsection (2) must comply with any direction given to the person under subsection (6) when authorising a person (or description of person) under subsection (1)(c).
- (8) The Scottish Ministers may by regulations—
  - (a) modify the list in subsection (1),
  - (b) modify the list in subsection (2),
 so as to add to, amend or remove any entry on the list.”.
- ( ) In section 59(3) (regulations subject to affirmative procedure), after paragraph (ad) insert—
  - “(ae) regulations under section 16J(8);”.>

**Jeremy Balfour**

19 In section 26, page 31, leave out line 35



**Joe FitzPatrick**

- 54 In section 26, page 32, line 4, leave out from <means> to end of line 8 and insert <has the meaning given in section 16J(1),>

**Section 27**

**Jeremy Balfour**

- 20 In section 27, page 33, line 5, leave out <6G,>

**Jeremy Balfour**

- 21 In section 27, page 33, line 27, leave out <6G,>

**Jeremy Balfour**

- 22 In section 27, page 33, line 29, leave out <6G,>

**Jeremy Balfour**

- 23 In section 27, page 33, line 37, leave out <6G,>

**After section 27**

**Lewis Macdonald**

- 62 After section 27, insert—

**<Review and report on operation of Act**

- (1) Before the end of the review period the Scottish Ministers must—
  - (a) carry out a review of this Act,
  - (b) set out the conclusions of the review in a report, and
  - (c) publish the report.
- (2) The report must in particular set out—
  - (a) the objectives intended to be achieved by deemed authorisation for transplantation under section 6D,
  - (b) an assessment of the extent to which those objectives have been achieved,
  - (c) an assessment of whether those objectives remain appropriate, and
  - (d) an assessment of whether adequate support is being provided to relatives of a person who has authorised, or has been deemed to have authorised, the removal of a part of the person’s body for transplantation, both before and after transplantation.
- (3) In this section, “review period” means the period of 5 years beginning with the day of Royal Assent.>

## Section 28

### Joe FitzPatrick

- 55 In section 28, page 34, line 15, leave out <2, 4, 22,>

### Lewis Macdonald

- 63 In section 28, page 34, line 19, at end insert—
- <(3A) The Scottish Ministers may not appoint a day for section 7 to come into force until they have complied with subsection (3B).
  - (3B) The Scottish Ministers must, for a period of 2 years beginning with the day of Royal Assent, promote information and awareness about how transplantation may be authorised (including, in particular, how authorisation of transplantation may be deemed to be given).>

## Section 29

### Lewis Macdonald

- 64 In section 29, page 34, line 24, after <Tissue> insert <Transplantation>

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